

No. 13600

---

United States  
Court of Appeals  
for the Ninth Circuit

---

ANGLO CALIFORNIA NATIONAL BANK OF  
SAN FRANCISCO, Appellant,

vs.

SCHENLEY INDUSTRIES, INC., a corporation,  
Appellee.

CHARLES W. EBNOTHER, Trustee of the  
Estate of Hedgeside Distillery Corporation,  
Bankrupt, Appellant,

vs.

SCHENLEY INDUSTRIES, INC., a corporation,  
Appellee.

---

Transcript of Record

In Two Volumes

VOLUME II.

(Pages 481 to 960, inclusive)

---

Appeals from the United States District Court for the Northern  
District of California, Northern Division

FILED  
JUL - 9 1953

PAUL P. O'BRIEN  
Clerk



No. 13600

---

United States  
Court of Appeals  
for the Ninth Circuit

---

ANGLO CALIFORNIA NATIONAL BANK OF  
SAN FRANCISCO, Appellant,

vs.

SCHENLEY INDUSTRIES, INC., a corporation,  
Appellee.

CHARLES W. EBNOTHER, Trustee of the  
Estate of Hedgeside Distillery Corporation,  
Bankrupt, Appellant,

vs.

SCHENLEY INDUSTRIES, INC., a corporation,  
Appellee.

---

Transcript of Record

In Two Volumes

VOLUME II.

(Pages 481 to 960, inclusive)

---

Appeals from the United States District Court for the Northern  
District of California, Northern Division



(Testimony of Earl Johnson.)

Mr. La Shelle: Q. Now, Mr. Johnson, again referring to the attached papers, the 3381-B, and particularly the invoice, the two invoices here, I'll refer you to what appears to be some kind of a stamp or a number, and some red typing down in the lower righthand corner, to the effect that the storage charges accrue from the date of inspection, and so forth, and the same type of stamp and the same red typing,— from your knowledge of the practice of Schenley, is that their entry?

A. That would be Schenley's entry.

Q. For their own internal auditing convenience?

The Referee: Mr. La Shelle——

Mr. Fisk: The photostats before this Court don't [784] show red at all. I don't know what Counsel is talking about.

The Referee: Mr. Fisk, that's the reason I was interrupting Mr. La Shelle. My photostat doesn't, either, so I was going to ask him——

Mr. La Shelle: In other words, that would be for Schenley's own internal auditing convenience.

A. That's correct.

Mr. Fisk: Your Honor, I think that is an objection to that question there. Here is some typing on an invoice in red letters, and the witness was asked, in the light of his knowledge of the practice of Schenley's, is that entry or was that entry put there by Schenley. I submit that this witness can't answer that question. He can state what the practice of Schenley was, but he can't look at a document and say that, in the light of his knowledge

(Testimony of Earl Johnson.)

of Schenley's practice, an entry made on a document was made by Schenley, where it's merely typewritten in.

The Referee: Just a minute, maybe I misunderstood Mr. Johnson. You looked at that invoice.

The Witness: I did.

The Referee: And as I understood, you said that that statement, this stamp and also these red typewritten words there were put on there by Schenley's for their own internal operation and audit, is that correct?

A. Yes.

The Referee: Do you know who put them on there? [785] I am talking about general practice, I mean, referring to that Identification Exhibit.

The Witness: The typewritten statements on there are—

The Referee: Read the typewritten statements.

The Witness: Stating: "Storage charges accrue from date of inspection, stored at Hedgeside Distillery, I.R.B.W. Number 2, Atlas Way, Napa, California." In the operation of Schenley, there is a bulk whisky department, which maintains control or an inventory running record of what is on hand for production purposes. When a contract, or when any agreement is entered into, pertaining to bulk whisky storage, that storage charges will be paid by Schenley, the documents are processed through the bulk whisky department, to determine that material or merchandise is according to their records on hand, and they would make a notation on the

(Testimony of Earl Johnson.)

invoice to the effect that it was okay to pay storage charges, from that particular time, on.

The Referee: Now, getting back to my question:

Q. Do you know anything about those typewritten words in red there?

A. I would say, from my experience with Schenley's, that these had been inserted by our Bulk Whisky Department. They would make the statement to the effect that from that time on, it would be okay for our Accounts Payable Department to pay storage charges.

Q. Do you know whether they did or did not put that statement [786] on that invoice?

A. I don't know whether that particular statement was put on there, but as general practice some notation along that line would be made by that department.

Q. How about that red stamp there?

A. That, I am not sure of, no. It's for internal control purposes. We have various notations made on the invoices, but just what the purpose of that particular one would be, I couldn't answer that.

Q. Do you know who put it on there—that red stamp?

A. No; probably somebody within the——

Q. I don't mean "probably". Do you know, of your own knowledge who put that on there?

A. No.

Mr. La Shelle: The purpose of this is simply, Your Honor—we don't contend that these things

(Testimony of Earl Johnson.)

put on by Schenley have any evidenciary value whatsoever. It is purely for their own internal purpose. And we are not making any point.

We offer a stipulation to Court and Counsel that those notations, as far as evidence are concerned, they have no evidenciary value, but there is no way of taking them off the invoice.

Mr. Fisk: I'll accept your stipulation. I'll stipulate with you that that statement on the invoice should have no evidenciary value in this proceeding.

The Referee: Against the Anglo Bank or against [787] the Trustee.

Mr. La Shelle: Probably they were their entries for their own internal purposes and are self-serving and couldn't prove anything.

The Referee: Mr. Fisk said he would offer the stipulation, and Mr. Walsh said, and you accept the stipulation, Mr. La Shelle?

Mr. La Shelle: Yes.

Q. Now, with reference to the balance of this group here, of warehouse receipts as shown on number 34 for Identification, beginning with 3381 to and including 3407, with reference to the balance of those, have you examined those with reference to the attached documents? You have already done that and assembled them before you came to Court, haven't you?           A. I did.

Mr. La Shelle: This group here, Your Honor, which I just mentioned it was with the understanding about the pencilled memoranda attached to the



(Testimony of Earl Johnson.)

warehouse receipts that have no other attached papers, we offer in Evidence as Petitioner's Exhibit next in order, with this exception: The warehouse receipts are not offered at this time, the warehouse receipts themselves. What is offered on the Exhibit is the cancelled check, the voucher, the cancelled draft, the invoice or invoices. I don't think we need to offer the Accounting Distribution. May I just confer a moment? I don't quite understand that. [788]

The Witness: That's strictly an internal memorandum, showing the accounting distribution of payment.

Mr. La Shelle: I think they all have accounting distribution. Let me just check. We only offer the cancelled checks of that group, the voucher, the cancelled drafts and the invoices. The accounting distribution, being an internal audit matter, is not of any evidenciary value. We do not offer it, nor do we offer an office copy of what purports to be a letter dated April 7, addressed to Franciscan by Schenley—I should say, April 7, 1947, which is attached to warehouse receipt number 3407. But we offer the other documents, consisting of cancelled check, voucher, cancelled drafts, and invoice or invoices, as the case may be, as Petitioner's next in order.

Mr. Fisk: Is the letter dated April 7, 1947, from Schenley to Franciscan, attached to warehouse receipt 3407-B, the only letter of that character in

(Testimony of Earl Johnson.)

this group? The photostats furnished us, Mr. La Shelle, don't have any copies.

Mr. La Shelle: Pardon me?

Mr. Fisk: The photostats furnished us don't have any copies of these letters. Now, is this the only letter in that group?

Mr. La Shelle: That's the only one we have.

Mr. Fisk: That's just what I mean. I am not trying to——

The Referee: Mr. Fisk, did you say the photostat [789] furnished you did not have a photostatic copy of the letter of April 7, 1947 attached to warehouse receipt number 3407-B and the accompanying papers?

Mr. Fisk: I said that, and I think I'm correct, but let me check.

Mr. La Shelle: The Court has it. The Court's photostatic copy has it.

Mr. Fisk: No sir, we do not have it. We do not have it, and as a matter of fact, I recall on the morning that Mr. La Shelle handed these documents to me, he had photostats and he had those in the original form, those letters, and I don't think it was ever submitted to us.

Mr. La Shelle: I don't understand it. The Court's copy has it.

The Referee: Mr. La Shelle, we had more than one set of these warehouse receipts and company's documents. Now, do you have your set with you?

Mr. La Shelle: No, I never did have a set, and I might state that I furnished Counsel at consider-

(Testimony of Earl Johnson.)

able expense with my photostatic copy, and I haven't even got a set of these. I have to use the original.

The Referee: You can examine this for a moment.

Mr. Fisk: I have seen the letter, all right, but I don't have a copy of it.

The Referee: But you don't have a copy?

Mr. Fisk: No sir; not any copy of the letters were [790] were furnished to me with any groups.

The Referee: I would suggest, before you make any objection, if you are going to, that you examine the set that has been furnished the Court, warehouse receipts number 3381-B to 3407-B, with accompanying documents, and see what the accompanying documents are.

Mr. Fisk: We have everything but the letter of April 7, 1947.

Mr. La Shelle: Well, it's the last one. It might have gotten torn out.

Mr. Fisk: We didn't get any of it.

Mr. La Shelle: It's the only one here.

Mr. Fisk: I mean, in the other groups there are some more of these letters. I saw a lot of them.

(Discussion off the record.)

The Referee: Mr. La Shelle is offering in Evidence, with the exception of the Warehouse receipts, which he is not offering at this time, the documents that accompany the warehouse receipts that appear on Petitioner's Exhibit 34 for Identification.

Mr. Walsh: Consisting of the documents at-

(Testimony of Earl Johnson.)

tached to 13 warehouse receipts, beginning with 3381-B, down to 3407-B?

The Referee: Correct.

Mr. Walsh: I am going to make the objection, if Your Honor please, the proper foundation has not been laid for the introduction in Evidence of these documents. [791]

Mr. Fisk: That is in line with my previous objection. I object on the ground as to the introduction of each one of the documents as incompetent, irrelevant and immaterial, and no proper foundation laid.

The Referee: Objection overruled, and the Court is now removing the documents just referred to from Petitioner's Exhibit Number 30.

Mr. Fisk: The documents will be kept— The other remaining documents will be kept with the Court for Identification.

The Referee: That's right. What I am trying to do, Mr. Fisk, is——

Mr. Walsh: You better remove the warehouse receipts.

Mr. Fisk: I think that would probably be the best way to do it.

The Referee: I am trying to do it the simple way, but still have all the documents before the Court. All of them are still here for Identification, but what Mr. La Shelle has done, he has taken a portion of Petitioner's Exhibit Number 30 for Identification, and offered those documents in Evidence.

Mr. Fisk: Wouldn't it be simpler to write on the

(Testimony of Earl Johnson.)

back of the ones that are not offered or received at this time—"Not received in Evidence"?

The Referee: I won't even touch the group that are still marked Petitioner's Exhibit 30 for Identification. [792] We will still have that Exhibit. What I am doing, I am overruling your objection and Mr. Walsh's objection, and I am receiving in Evidence, not the warehouse receipts, but the supporting documents accompanying those thirteen warehouse receipts.

Mr. Fisk: Exclusive.

The Referee: Exclusive of the warehouse receipts, and calling that Petitioner's Exhibit Number 49 in Evidence.

Mr. Fisk: But Your Honor, he excluded other documents, too.

The Referee: And also, pursuant to the stipulation, the other documents, including the notations that we have already referred to——

Mr. Fisk: No, I didn't have reference to that. He excluded other documents.

Mr. La Shelle: I excluded the internal audit paper and that letter which still remains marked for Identification. I'm sorry that this evidence is of such a nature, Judge; I just can't put it in much easier.

The Referee: That part is all right, except that Counsel on all three sides are entitled to know what is in and what is out.

(Discussion off the record.)

Mr. La Shelle: I do this, without prejudice, to

(Testimony of Earl Johnson.)

anyone's rights. It's simply a distinction to see if we can keep our Exhibits a little easier. Number 30 for Identification, [793] which includes this group on the schedule here for Identification Number 34, starts with 3381-B, which is, we will contend later, under this Franciscan contract, first.

The Referee: Now, wait a moment. 3381-B to 3407-B.

Mr. La Shelle: 3381-B to 3407-B. That's the group you have, and the next group are these warehouse receipt numbers, and purely for identification purposes at this time start with 3511-B and run to 3673-B. While that is Franciscan production, it was not bought from Franciscan. It was bought, we contended, from Hedgeside.

The next group, beginning with 3673-B, over to and including 3687-B, which comprise the entire Exhibit 30, was bought under Petitioner's Exhibit 25-B, the October 13, 1947, contract.

And I think perhaps it would be better if I went over those quickly and introduced the whole bunch as a group. Then, all we have to do is to write in each, instead of having the Exhibit Number. I'll proceed along those lines, subject to all of the rights of the opposition to object. I make that as a suggestion for clarity.

Mr. Fisk: That's all right with me.

The Referee: I have no objection.

Mr. Walsh: I have no objection.

The Referee: We haven't clarified this matter yet. First of all, the Court has indicated here Pe-

(Testimony of Earl Johnson.)

titioner's Exhibit Number 49. There is no 49 at the moment, the last Exhibit [794] being 48, Certified Copy of the Articles of Incorporation, so I will strike this 49, but I am still receiving in Evidence, subject to Mr. Fisk's request for a clarification, as to just what is going in Evidence on this original offer you have made. Now——

Mr. La Shelle: Now, I'll proceed.

The Referee: Mr. La Shelle, now wait a minute. Still talking about this group from 3381 to 3407-B, there are certain documents in this group that, by your own statement, are not in Evidence.

Mr. La Shelle: That's right.

The Referee: First of all, there are those pencil memoranda for the aid of Court and Counsel throughout.

Mr. La Shelle: Considered to be for Identification only.

The Referee: Right. The warehouse receipts are not received at this time.

Mr. La Shelle: Identification only.

The Referee: The red lettering, typewritten statements and the stamp on the invoice is not a part of the evidence.

Mr. La Shelle: That's correct, that's not Evidence, merely Identification.

Mr. Fisk: Not the stamp on the invoice. Mine is the red lettering. I don't know what the stamp on the invoice is. [795]

The Referee: The red lettering that was read into the record that you stated was for internal pur-

(Testimony of Earl Johnson.)

poses only, Mr. Johnson stated that; is that right?

The Witness: Yes.

The Referee: And there was also a stamp, in addition to the typewritten words; is that true?

The Witness: That's right.

The Referee: And those red letter statements and the red letter stamp on those documents, whatever it might be, whatever kind of documents are, put on there by Schenley's for their internal purposes only.

The Witness: I believe that's true; I'm not positive.

Mr. Fisk: As far as the stamp is concerned, it's the stamp of a bank.

The Witness: It may be. That's why I say I believe that's true, but I am not certain about that.

Mr. La Shelle: In any event, we are not offering—I mean, we can't take it off, the way we can take something off that is attached.

Mr. Fisk: That's right, but we have a stipulation that the typewritten statement of storage charges accrued from date of inspection and stored, and so forth, were not evidenciary in this case. Now, that doesn't go to the other stamp.

Mr. La Shelle: Well, if you want to use it, it's all right with me. [796]

The Referee: Well, for the purpose of clarity, then, the stipulation is that the typewritten words on there are not received in Evidence and do not alter the document upon which they appear, but were merely for the use of Schenley.



(Testimony of Earl Johnson.)

The Witness: That's right.

The Referee: As far as the stamp is concerned, it is still a part of the document, and you don't know who put that in there.

The Witness: I don't know who put that in.

The Referee: Does that satisfy you, Mr. Fisk?

Mr. Walsh: You forgot to put "typewritten in red".

Mr. Fisk: You left out the "red".

The Referee: Oh, typewritten in red.

Mr. Fisk: My stipulation that it was not put on there by Schenley, it was simply that it was not offered in Evidence, or to be used under this offer as Evidence in this proceeding. I don't know who put it on there, or anything about that.

Mr. La Shelle: That's my understanding, that the little typewritten notation, with reference to storage charges and storage, is of no evidenciary value in this case.

The Referee: And is not a part of the document.

Mr. La Shelle: Yes, in other words, we would take it off, if we could.

The Referee: Now, the next stipulation was that on some of these warehouse receipts there is also another document, "Accounting Distribution".

The Witness: Pardon me, Your Honor, there is a form which all of these carry, form T.C. 10.

The Referee: Form T.C. 10, Accounting Distribution, which was merely for internal purposes only of Schenley's.

The Witness: That is correct.

(Testimony of Earl Johnson.)

The Referee: And, Mr. La Shelle, that is not a part of this Exhibit. The internal distribution T.C. 10 form, is that right?

Mr. La Shelle: That's correct.

The Referee: Now, that will clarify temporarily that portion of Exhibit Number 30. The Court will receive the documents, as specified in Evidence, will overrule the objection, but prior to marking them will go along with Mr. La Shelle's suggestion that we proceed with the balance of Petitioner's Exhibit Number 30 for Identification.

Mr. La Shelle: I'll show you, and referring particularly to Petitioner's Exhibit Number 34 for Identification, which purports to be various warehouse receipts, beginning on 34 for Identification, with the number 3511-B, down to and including 3687-B—

Mr. Walsh: Consisting of how many, Mr. La Shelle? 33?

The Witness: No, there are some duplicate numbers there, Frank.

Mr. La Shelle: Lots of duplicate numbers.

The Witness: Thirteen. [798]

Mr. La Shelle: A lot of numbers are written twice where there are duplicate invoices.

Mr. Walsh: Thirteen of them.

The Witness: That's right.

The Referee: How many?

Mr. Walsh: There are thirteen of them.

Mr. La Shelle: Q. Now, with reference to that group that I just enumerated, Mr. Johnson, did

(Testimony of Earl Johnson.)

you assemble the various papers that are attached to those warehouse receipts?      A. I did.

Q. And where did you get those attached documents?

Mr. Walsh: Now, Mr. La Shelle, so we won't be mixed up, you are offering 3511-B down to 3687-B?

Mr. La Shelle: That's right.

Mr. Walsh: Which also includes the warehouse receipts covering the Hedgeside liquor.

Mr. La Shelle: Yes. In other words, without binding you at all by my statement, at the conclusion of this case, we will contend that that merchandise, represented on the first page under the caption, "Spirits and whisky purchased from Hedgeside", et cetera, beginning with warehouse 3511-B, down to and including 3673-B, were purchased from Hedgeside, and not from Franciscan.

Mr. Walsh: Under what contract?

Mr. La Shelle: Under Part 2 of the 10-13-47 contract between Schenley and Hedgeside, in which certain on-hand [799] spirits were purchased. They were described as "on-hand spirits", as distinguished from spirits to be produced. If you want to see it, I'll show the part——

(Discussion off the record.)

Mr. La Shelle: Under part 2 of 22-B, Schenley agreed to purchase certain on-hand spirits, which are represented in Exhibit A to the contract.

Mr. Walsh: And belonging to Hedgeside, not Franciscan.

(Testimony of Earl Johnson.)

Mr. La Shelle: That's correct.

Mr. Walsh: What is the purpose of introducing all these documents in Evidence, consolidating the Hedgeside with the Franciscan?

Mr. La Shelle: Well, the only thing was that originally, simply for purposes of identification, we put these in two groups, because that whisky under part 2 there had originally been produced by Franciscan, sold to Hedgeside, and they sold to us.

Mr. Walsh: We can take that up at the next hearing.

Mr. Fisk: I have made an appointment at 4:00.

Mr. La Shelle: I'm sorry.

(Thereupon an adjournment was taken.)

\* \* \* \* \* [800]

#### EARL JOHNSON

having been previously sworn, resumed the stand and testified further as follows:

#### Direct Examination—(Continued)

Mr. La Shelle: I'll hand you the originals, what purport to be original [803] warehouse receipts 3511-B, 3512-B, 3671-B, and 3673-B, with reference to that group of warehouse receipts, did you assemble those? A. I did.

Q. And the attached papers in the way of cancelled checks, vouchers and invoice came from where?

A. From the files of Schenley. They might have come from either New York or from the San Francisco files.

(Testimony of Earl Johnson.)

Mr. Walsh: Just a minute, your Honor please, I am going to ask that that answer go out—they might have come.

By the Referee: Q. Do you know, Mr. Johnson?

A. I could tell by inspection of each document. I say they're the same form of document. I would have to go by the dates and by the request which I made of New York to know whether they came from New York.

Q. Can you tell by examining those documents now and tell the Court or counsel whether they came from—each individual came from New York or San Francisco or by examining accompanying documents?

A. I believe I can. Attached to 3511-B, the check—the cancelled check came from the New York Internal Audit Department.

By Mr. La Shelle: Q. Where did the balance of the attached papers come from?

(Discussion off the record.) [804]

The Referee: And the witness has testified that the check in the sum of \$1701.38 came from the New York office.

A. The copy of the voucher, copy of the Hedge-side invoice attached to that warehouse receipt, came from the New York Accounts Payable Department.

Q. How about the rest of them?

A. In connection with all of the documents, except for the cancelled checks, they all came from

(Testimony of Earl Johnson.)

the New York Accounts Payable Department. I would have to refer—I can't tell exactly on the checks; I would have to go by the cancellation dates whether they came from the New York Internal Audit Department or from my department out here—corresponding department out here. That I would have to refer in these particular instances to the correspondence.

Q. Well, in either event, they came either from the New York Accounts Payable Department or San Francisco.

A. No, in the cancelled checks, it came from the Schenley Internal Audit Department, either from the New York or from the San Francisco files of that department.

By the Referee: Q. But on this group, the other accompanying documents came from the New York Accounts Payable Department.

A. That's right.

Mr. La Shelle: All right, this group, your Honor, consists of the second part of the schedule here and with [805] the exception of the warehouse receipts, which are not yet properly qualified, we offer those attached papers to those warehouse receipts in evidence, subject to the understanding that the little pieces of paper that we have heretofore discussed that act as an index guide, be considered only for identification and on one or two of these there is also a letter from Hedgeside which we will leave clipped because that's where it belongs, but that is not yet offered in evidence because that has not yet

(Testimony of Earl Johnson.)

been qualified. We'll have to do that by another witness. That would be Petitioner's Exhibit No. 50.

The Referee: With the exception of the warehouse receipts and the memorandum and the original letters attached, Petitioner's Exhibit No. 50.

Mr. Walsh: Now, that's subject to the objection that has already been heretofore made, your Honor please.

The Referee: It is understood.

Mr. Fisk: With respect to the first group shown in Petitioner's 34-c for Identification.

The Witness: That's 49.

The Referee: No, with reference to the second group included in Petitioner's schedule No. 34 for Identification, commencing with warehouse receipt No. 3511-B down to and including warehouse receipt number [806] 3673-B, the accompanying papers, exclusive of the warehouse receipts and the documents mentioned by the Court, the objection is overruled, Petitioner's Exhibit No. 50 in evidence. Was formerly a part of No. 30 for Identification.

Mr. La Shelle: Now, the next group that we are going to work on, your Honor, is the third group on Schedule C, Petitioner's No. 34 for Identification, under the caption on the schedule "Spirits produced under the terms of the contract dated October 13, 1947" and you will note from the schedule there, that the first warehouse receipt number is 3673-B, which is also the last one of the other group. It just so happened that the way that these things came through ultimately, (I explained that before)

(Testimony of Earl Johnson.)

so naturally we can't have them in both groups.

Q. Handing you this group of exhibits, beginning with warehouse receipt No. 3674-B as shown by the schedule on Petitioner's Exhibit No. 34, down to and including No. 3687-B, did you assemble the documents attached to those warehouse receipts and the warehouse receipts? A. I did.

Q. And the warehouse receipts in this group and also the last group were obtained where—the warehouse receipts themselves?

A. The warehouse receipts themselves were obtained from the heads of our production department, San Francisco. [807]

Q. And then with reference to the attached documents, which consist in the main of cancelled checks, invoices and vouchers, were they the same as the last group, either from the San Francisco or New York office of Schenley's? A. Yes.

Mr. La Shelle: And your Honor will note—

The Referee: One to how far? Down to 87?

The Witness: I think that's it.

Mr. La Shelle: Your Honor will note on many of these there is attached the original letters from Hedgeside to Schenley enclosing the new Hedgeside receipt that originally had been covered by receipts of Franciscan, or rather, I think they called it Mountain View, and then those were surrendered and changed. Many of these have these letters attached and, of course—I am not offering those in evidence. We offer this group as petitioner's exhibit next in number, 51, I guess, with the same under-



(Testimony of Earl Johnson.)

standing, that whatever notes there are in the way of an index or a guide be considered simply for identification and the letters that are clipped to it from Hedgeside enclosing the warehouse receipts and the warehouse receipts themselves are not yet to be considered in evidence, although they are clipped together in a group which we're keeping it just for mechanical purposes of keeping them in order.

The Referee: Objection overruled, Petitioner's Exhibit [808] No. 51, formerly a portion of Petitioner's Exhibit No. 30 for Identification.

Mr. La Shelle: In other words, originally, your Honor, 30 consisted of production of four serial numbers or less, which is Franciscan; 31 consisted of five serial numbers or more, which was Hedgeside and while the serial numbers in this group are Franciscan production, they were on-hand spirits both under the October 13, '47 contract from Hedgeside and no contention is made by the petitioner in this case that this was a transaction between petitioner and Franciscan. It is our contention that it was a transaction between petitioner and Hedgeside under the second part of the October 13, 1947 contract, which is Petitioner's Exhibit 22-B.

The Referee: Mr. La Shelle, let me have the original groups of 49, 50 and 51 because you're withdrawing them now and substituting photostats.

Mr. La Shelle: Oh, yes.

(Discussion off the record.)

Mr. Fisk: Mr. La Shelle, before you proceed, so that—it may be stating in different language the

(Testimony of Earl Johnson.)

same thing you have said, but so that I will have it clearly in my mind as to what you have introduced in evidence of these groups, there is a warehouse receipt which is not in evidence, there is a cancelled check, [809] there is a voucher, there is an invoice and there is a——

Mr. La Shelle: Let me put it this way: In some instances there is nothing attached except Mr. Johnson's little index guide because in some instances the invoice will support two warehouse receipts and not just one. But put it this way: That in that group there, generally speaking, it consists of cancelled checks, invoices, vouchers, and——

The Referee: Sight draft?

Mr. La Shelle: Mr. Johnson's little index. In that group there are no sight drafts. Are there? No.

The Witness: No.

Mr. La Shelle: In some of the other groups, there are.

The Referee: But Mr. Johnson's index is not in and the letters that are attached to some are not in, and the warehouse receipts are not in, is that correct?

Mr. La Shelle: That's correct. For example, here is one in the group coming up where the only thing attached to it is a little index.

Q. Now, Mr. Johnson, for the benefit of Court and counsel, the next group starts on page 3, I guess it is, of Petitioner's Exhibit No. 34, starting with warehouse receipt No. 3364-B, which is the first warehouse receipt on the schedule under the

(Testimony of Earl Johnson.)

September 17, 1945 contract as amended and extends down to and [810] including warehouse receipt No. 3435-B. That's this group here (indicating). I'll hand you that group of warehouse receipts beginning with 3364-B. Would you just look those over for a minute and familiarize yourself with them? Now, that group of warehouse receipts that I just mentioned, you assembled that, did you?

A. Yes, sir.

Q. And the warehouse receipts themselves came from where?

A. From the production offices in our San Francisco location.

Q. And the attached documents to the respective warehouse receipts in question came from where?

A. They came from two sources in our New York office. The cancelled checks in all cases came from the Internal Audit Department, our New York office. The other supporting documents came from our Accounts Payable Department in the New York office on this particular group.

Q. Now, in this group, your Honor, for Mr. Fisk's benefit, I think each one of these involve a sight draft do they not?      A. I believe so.

Q. Yes. Each have sight drafts, with the exception, of course, the warehouse receipts that have nothing except the index attached to them. With the exception of—oh, I might add this. I notice that warehouse receipt No. 3364-B has on the back what purports to be a withdrawal of 45 barrels and I believe some of the others have various withdrawals

(Testimony of Earl Johnson.)

on them in all of these exhibits and am I correct in stating that the [811] schedule, Petitioner's Exhibit No. 34 makes allowances for those withdrawals?

A. Yes.

Q. In other words—

A. It shows the net quantity on the warehouse receipts now.

Mr. La Shelle: On this group, with the exception of warehouse receipt, and with the exception of the various office copies of letters purporting to be written to Schenley and Hedgeside, for the record attached to warehouse receipt No. 3364-B in what purports to be an office copy of Schenley's New York office, dated March 3, 1947 addressed to Hedgeside, those letters are not offered. They can be considered for identification in the same manner that the index guide is considered for identification. With those exceptions, we offer the attached documents in evidence in this group as Petitioner's Exhibit No. 52, is it?

The Referee: Objection overruled, Petitioner's Exhibit No. 52 being the accompanying documents from warehouse receipt 3364-B up to and including warehouse receipt No. 3435-B, with the exclusion of the documents mentioned by Mr. La Shelle.

Mr. Fisk: One question. I don't quite understand counsel's statement with reference to the letter attached to warehouse receipt 3364-B and similar letters attached to the other warehouse receipts, which letter is dated March 3, 1947 and purports to be a letter from Schenley [812] to Hedgeside.

(Testimony of Earl Johnson.)

That letter is to be a guide. What do you mean by a guide?

Mr. La Shelle: No, no, I am just offering it. No.

Mr. Fisk: It's just in for identification.

Mr. La Shelle: It's just in for identification. It was sent to us and here it is.

The Referee: And the documents just referred to were formerly a part of Petitioner's Exhibit No. 31 for Identification now become Petitioner's Exhibit No. 52 in evidence.

Mr. La Shelle: And also further to identify that, that's the group of warehouse receipts on Petitioner's Exhibit No. 34 for Identification on page 3 of the exhibit purportedly under the terms of the contract, from Hedgeside, dated September 17, 1945. If you take that schedule and put brackets around these various warehouse receipts there in the exhibit number, it might be some help to following the evidence.

The next group is on the same page of Petitioner's Exhibit No. 34 for Identification, which will be the last group: "Spirits produced and purchased under the terms of the contract dated October 13, 1947." It begins with warehouse receipt No. 3480-B down to and including 3670-B, with the exception of warehouse receipts Nos. 3525, 3538, 3539, 3541, 3543, 3546, and 3545 which are [813] already a separate group numbered 43 and according to my list, they are for identification. The reason that I took those out, your Honor may recall those consist of the serial number range which the bank claims in

(Testimony of Earl Johnson.)

its pleadings to have duplicate warehouse receipts and for that reason so that they can easily be identified for reference purposes we made them another exhibit number.

Q. Now, take this range of certificates, or warehouse receipts, I should say, 3480 to 3670 which I just discussed, would you look those over please for a moment? A. I inspected them.

Q. You assembled this group of warehouse receipts also? A. I did.

Q. And the warehouse receipts came from where?

A. From the production management in our San Francisco offices.

Q. And the attached papers were assembled by you and where did they come from?

A. The checks, the cancelled checks came either from the New York Internal Audit Department or the files of my department, which is the Internal Audit Department on the West Coast. The other supporting documents were obtained from the New York Accounts Payable Department.

Q. And this group does not have any sight draft, does it?

A. There's a few—the first few have. I think it's only [814] the first one, attached to 3480-B.

Q. I am not sure, I think this was covered, but at the risk of asking you again, with reference to the sight drafts as shown by various other exhibits, in some groups and in some instances there are sight drafts as attached papers and in other groups there are not any such attachments. I think that the

(Testimony of Earl Johnson.)

ones that have sight drafts are the ones where the sight draft was on New York, wasn't it, through the Bankers' Trust?           A. That's true.

Q. And with reference to the sight drafts that were used locally here in San Francisco, you made a search for those?

A. I made a search for them.

Q. You have been unable to find them?

A. I have been unable to find them.

Mr. La Shelle: On this group, your Honor, we offer these attached papers, not the warehouse receipts, but the attached papers, in evidence with a similar offer before. For example, there are attached occasionally some letters similar to the letters I mentioned before and in one particular instance, there is attached to warehouse receipt 3480 a telegram dated October 29, 1947 from J. B. Donnelly to J. B. Popkin. That telegram, of course, is not offered. It happens to just be clipped in. As a matter of fact, there are two or three things, such as what appears to be a teletype message, two or three telegrams, are [815] attached to this, as well as a news communication. The telegrams, interoffice communications, letters and the like can be considered merely as identification and not in evidence.

Mr. Walsh: May I see that before it is put in evidence, please?

Mr. La Shelle: I might say, off the record. I'm sorry to take so long.

The Referee: That's all right.

(Discussion off the record.)

(Testimony of Earl Johnson.)

Mr. La Shelle: Then many of these warehouse receipts also have the only supporting or attached document is the index guide of Mr. Johnson which is also understood as being just for identification as an index or partial guide. We will offer this group, your Honor—well, the group that I read off a moment ago, in evidence under those conditions.

The Referee: Objection overruled, documents referred to by counsel formerly a part of Petitioner's Exhibit No. 31 for Identification become Petitioner's No. 53 in evidence.

Mr. Walsh: I assume that you are withdrawing the originals and substituting photostatic copies.

The Referee: Yes.

Mr. Fisk: I also assume that all these original documents that you are withdrawing, you will keep them [816] in San Francisco until we have at least concluded the putting in of evidence.

The Referee: That's understood.

Mr. La Shelle: Oh, yes. We have got the originals of everything so far.

(Discussion off the record.)

Mr. La Shelle: Now, I am referring to another group of exhibits which were excluded from the last number—what was it, 52?

The Referee: 53.

Mr. La Shelle: Fifty-three, and these warehouse receipts, Nos. 3525-B, 3538-B, 3539-B, 3541-B, 3543-B, 3544-B, and 3545-B, that group again, for the purpose of identification, representing serial numbers of Hedgeside production which the bank



(Testimony of Earl Johnson.)

claims in its answer to have duplicate warehouse receipts for.

The Referee: And formerly No. 43 for Identification.

Mr. La Shelle: And formerly No. 43 for Identification.

Mr. Fisk: The bank claims warehouse receipts, not duplicates.

Mr. La Shelle: Well, a rose by any other name.

(Laughter.)

Mr. La Shelle: With reference to this group of warehouse receipts, I think you have previously testified [817] but I am not sure, that you assembled that group? A. I did.

Q. And the warehouse receipts themselves came from the San Francisco production department?

A. The originals in the warehouse receipts represented. These are the photostats. The originals came from the San Francisco production offices.

Q. And then the attached papers came from where?

A. The checks, the cancelled checks came from either the New York or the San Francisco Internal Audit Department files. The remaining documents came from the New York office, accounts payable files.

Q. With reference to this group, your Honor, with the same understanding as the warehouse receipts themselves, we offer this group of attached documents to these warehouse receipts, in evidence. I don't think there are any of these indices at-

(Testimony of Earl Johnson.)

tached to these. If there are any, the same understanding. That will just cover 43 in evidence, I think.

(Discussion off the record.)

Mr. Fisk: As I understand the Court, all of these documents now which counsel has termed "supporting documents" are offered subject to our objection that they are irrelevant, incompetent and immaterial and no proper foundation laid, with the result that if they are not connected up they would go out anyway because counsel contends these are supporting documents for the [818] warehouse receipts.

The Referee: Correct.

Mr. Walsh: What was your answer, your Honor?

The Referee: That's correct. Mr. Fisk's statement is correct. Well, when you say "supporting documents," you are excluding those other documents that Mr. La Shelle has excluded.

Mr. Walsh: Well, he has. I'm not excluding them.

The Referee: Yes, he has excluded other documents.

Mr. Walsh: That's right.

The Referee: Besides all the ones attached to the warehouse receipt.

Mr. La Shelle: I might state, you gentlemen have checked those very carefully already.

Mr. Walsh: We're very careful. We would like to refresh our memory.

Mr. Fisk: What is that on the back of those?

(Testimony of Earl Johnson.)

The Referee: 43 for Identification. Now, in addition to the objection, did you say that you might have a further objection to make?

Mr. Fisk: No, not at this time.

The Referee: Mr. Walsh?

Mr. Walsh: Other than the general objection we raised before.

The Referee: Objection overruled, Petitioner's No. 43 for Identification becomes Petitioner's No. 43 [819] in evidence.

Mr. Walsh: You're going to put that in as 43?

The Referee: Same number—43. The reason I changed those other numbers was because they were only a part of the former exhibit.

Mr. La Shelle: Directing the attention of court and counsel to Petitioner's Exhibit in Evidence No. 22-B which is the contract of October 13, 1947 between Schenley and Hedgeside and directing the witness' attention to page 17 of that contract, paragraph captioned "prices," now with reference to this contract Mr. Johnson, did you personally supervise the determination of the prices under that contract?       A. Yes.

Q. And I might state, your Honor, without reading the whole thing, simply to clarify this, that the contract provided for partial payment when the invoices came through according to a price formula and thereafter an order on the price formula which in substance amounted to more or less of a cost-plus formula based on the cost of grain and then on beverage purposes I think it was 12½ cents plus

(Testimony of Earl Johnson.)

and on redistillation stuff it was 5½ cents, is that right?      A. That's right.

Q. And——

Mr. Fisk: Now, wait, just a minute. Counsel started out by way—— [820]

The Referee: He was going to make a statement.

Mr. Fisk: He was analyzing the contract and then he finishes up and asks the witness: "Is that right"? I submit the contract speaks for itself. I don't object to your making your statement.

Mr. La Shelle: We can strike that out. I am just trying to save a little time so that the Court and everybody doesn't have to read through the whole contract.

Mr. Fisk: The witness' answer goes out.

The Referee: The witness' answer goes out.

Mr. La Shelle: As far as that's concerned, the contract speaks for itself and anything that I say that is contrary to the contract will, of course, be disregarded.

Q. Now, what did you do with reference to audit, monthly or otherwise, with reference to a final payment of a price under this contract?

A. Well, under the terms of the contract, monthly audits were provided to determine what the actual cost of production was at Hedgeside. During the month's operations, we accepted spirits and paid for them on a basis of a pricing formula which is contained in the contract. At the conclusion of each month's or approximate month's transactions, it

(Testimony of Earl Johnson.)

might have extended over, I believe—at the final audit it extended over to a period slightly longer than a month, and in the first [821] audit, due to a short period of production, from the time of the inception of the contract until the end of October, 1947 I believe that the audit was made covering the latter part of October and the beginning or all of November's production. Generally, it covered a month's production. My men—I established a procedure of audit which took as a basis, the payments which were made for the spirits accepted during the month of production and through establishing a cost control over what had actually been paid for what went into the manufacture of the spirits, plus the allowances for the plus portion of the contract which were for redistillation purposes, or for beverage purposes. We determined what the actual cost of production had been. Then, by subtracting the amount which had been paid against the amount which should have been paid, we determined whether there was a net payment to be made to Hedgeside in the event of this contract or whether Hedgeside if that particular period's production had been overpaid, so that there would be an amount refundable to Schenley.

Q. Now, what this has reference to, your Honor, is Petitioner's Exhibit No. 35 for Identification, which is called also Schedule D. And directing your attention to Petitioner's Exhibit No. 25-b, I believe it is, in evidence, which is the October 13 contract

(Testimony of Earl Johnson.)

between Schenley and Franciscan, did you make similar audits on that contract?

A. I think the audit was made on the same basis according to the terms of the contract which were in essence similar [822] to the terms in the Hedge-side contract.

Q. Now, I'll show you various—I'll show you a group of exhibits consisting of such groups, the top exhibit on each group being a Schenley check, the first one is 3068, 4683, 5707, 7401, 8734, 10272, 11420, and in each group there is a voucher and attached to that is a mimeographed form of audit consisting of a number of pages. Did you assemble this data, Mr. Johnson?

A. Yes, I did.

Q. And the cancelled checks came from where?

A. Either the files of the New York Internal Audit Department or the files of the Internal Audit Department, San Francisco.

Q. And the rest of the attached documents which you will be good enough to enumerate, came from where?

A. They came from the Accounts Payable files in the San Francisco offices.

Q. Now, simply for the purpose of clarity, I would like to have this for identification next in order, your Honor.

The Referee: 54.

Mr. La Shelle: I believe on that day, we went over all of these things, early in January——

(Discussion off the record.)

Mr. La Shelle: I don't think we can go any

(Testimony of Earl Johnson.)

further now because counsel want to look at this so we can recess at this time. [823]

Afternoon Session—2:00 o'clock p.m.

Mr. La Shelle: Your Honor, we were going into Schedule D and we're taking the group of photostats that counsel has checked against the original. I am dividing them into two groups, one for Hedgeside and one for Franciscan and if you would be good enough to mark this group, the Hedgeside group, as petitioner's exhibit for identification next in order?

Mr. Walsh: 54.

(Discussion off the record.)

The Referee: 54 will be the group starting with 07108 and ending with check No. 14599.

Mr. La Shelle: The next group beginning with check No. 08494 and ending with 13519, Franciscan group, be Petitioner's Exhibit No. 55 for Identification.

(Discussion off the record.)

Q. Now, Mr. Johnson, referring to Exhibit No. 54 for Identification, which consists of groups of documents, the first document of which is a cancelled check, (check numbers are not in sequence) 07108, 08549, 09514, 10930, 12171, 13520, and 145699, now, taking the first group of documents which are clipped together on check No. 107108, there is a voucher immediately under the——

The Referee: What was that number again, Mr. La Shelle? [824]

(Testimony of Earl Johnson.)

Mr. La Shelle: 107108.

The Witness: 07108.

Mr. La Shelle: My mistake, 07108.

Q. (Continuing): Underneath that is a voucher, underneath that is a request to check, purporting to be signed by yourself, then underneath that is an internal order, interoffice communication dated December 10, 1947 from E. I. Johnson to W. H. Evers and then underneath that, Exhibit A, and then following that is Schedule 1, Schedule 1-a, and Schedule 1-b. Now, referring to Exhibit A and the schedules 1, 1-a, and 1-b which are mimeographed, when were they made up?

A. They were made up just before the day of the covering letter on December 10, 1947.

Q. In other words, they were made up at or about the time of the audit. A. That's right.

Q. They weren't made up just for this litigation. A. No.

Q. Now, this refers, of course, to the Hedgeside contract of October 13, 1947. Now, as I understand it, you read the Exhibit A and the schedules in support of it, you start with the bottom schedule and read up, that is, you start with schedule 1-b.

A. That is correct.

Q. Now, were these schedules and exhibits that I have just referred to, made up under your personal supervision? A. Yes. [825]

Q. And with reference to the method of setting up the audit, did you set that up yourself personally or did someone else do it?



(Testimony of Earl Johnson.)

A. I did that personally.

Q. And referring to Schedule 1-b, the bottom schedule, I notice that there are various columns here and various figures, and will you please tell the Court where the data was secured for these various columns and what they mean and how they were set up?

A. Well, the information was pertaining to Schedule 1-b was obtained from the records maintained on the premises of Hedgeside Distillery in Napa. The first column refers to Form 1520 which is the government record form covering the production during that period, the number of barrels, the serial numbers and so forth, I believe, are all shown on that form, the number of OPG's—

Q. What are the OPG's?

A. That's the original proof gallons of production on the respective dates under this contract as shown on the form. The dates are shown under the first column following premises on 1520, which is a government form.

Q. Then as I understand it, Schedule 1-b fulfills the function of showing the total production in question that was audited?      A. That's right.

Q. And then is Schedule 1-b carried over into the next schedule?

A. That's correct. The summarization of 1-b is shown on [826] Schedule 1-a.

Q. And whereabouts is that shown?

A. No, I believe I'm wrong there. Schedule 1-a is another supporting schedule. Schedule 1-a and

(Testimony of Earl Johnson.)

Schedule 1-b actually support the information which is summarized on Schedule 1.

Mr. Walsh: Just a minute, I am going to ask that answer go out.

The Referee: So ordered—not responsive.

Q. Well, the total production shown on Schedule 1-b which appears to be 37,192.13 proof gallons, on what schedule is that carried over to?

A. That's carried over to Schedule 1.

Q. That's carried over to Schedule 1. So it does not appear in Schedule 1-a. A. No.

Q. Then Schedule 1-a, taking the various columns involved here, you have invoice, date delivered, date of grain, vendor, lading per cwt, amount malt and so forth, will you explain to the Court under the circumstances of audit used, from what source this information was secured?

A. Well, the source of purchases——

Q. Taking count by count.

A. Well, the source of purchases, which is essentially what is covered here, would be obtained from copies of information from the companies shown under the column entitled "vendor."

The Referee: What company? [827]

A. (Continuing): Well, there's various companies which the grains which were used in production were purchased from. That's all shown in this column entitled "vendor" on Schedule No. 1-a. The first—the invoice date was obtained from the vendor's invoices, the delivery date of grain was obtained from the vendor's invoices or the support-

(Testimony of Earl Johnson.)

ing documents to those invoices which would have been bills of lading or delivery receipts.

Q. Now, on the thing where it says "vendor" and it starts out Rohr Malting Company, I don't think that's quite clear what is meant there by the word "vendor." Who is vendor?

A. That would be the vendor, who from the Hedgeside Distillery Corporation purchased the items covered on these invoices.

Q. In other words, that's Hedgeside's vendor and not Schenley's. A. That's right.

Q. Now, on the next column where you have the top caption "milo," is it m-i-l-i? A. Milo.

Q. Then you purchase rate per cwt and amount. What does cwt mean?

A. Well, the cwt is a hundred weight.

Q. And will you explain to the Court what that is and what source that data was secured from?

A. Well, the first two columns under milo, the pound and the amount were obtained from copies of these invoices from the vendor shown in the third column over. In order to apply those [828] items in accordance with the terms of the Schenley-Hedgeside contract, it's stipulated in the contract that an average cost per pound, a weighed average cost per pound would be used. Therefore, in order to obtain the figure used, under the second column under milo, which is weight per hundred weight, we summarized the purchases by pounds and summarized the amounts and divided the total number of pounds into the amount in order to obtain the average and

(Testimony of Earl Johnson.)

that average shows then down against the column or against the line showing total available average cost. The same thing would apply under malt—what the average cost per hundred weight would be for the malt which was purchased from these sources.

The Referee: Just a minute now. So I won't be too confused, I see all the vendors listed in Schedule 1-a, I see the pounds and I see the amount, but under milo, the matter that you have just been testifying to, my exhibit is blank as far as rate per hundred weight is concerned on Schedule 1-a.

A. (Continuing): Your Honor, in order to obtain the average cost per hundred weight, which is determined per the contract, in order to determine that average cost, we had to take whatever the inventory was at the beginning—what was on hand at the beginning of the operating period, plus all of the purchases during that period, less the ending inventory of that period and in order to determine what the average cost would be, you would have to divide the total number of pounds available into the [829] total money which was paid for those available pounds and that figure appears underneath the line in the center column, rate per hundred weight.

Q. What figure is that so I can follow?

A. 4.43083.

Q. Now, on the lower lefthand side—

Mr. Fisk: Before you pass that, if the Court is through, I would like to just ask him a question by way of explanation. You said that the 4.43 odd cents

(Testimony of Earl Johnson.)

is the average cost of milo per hundred weight.

The Witness: That's right.

Mr. Fisk: Q. As determined from adding the column on the left and the column on the right and dividing the right into the left.

A. That's correct.

Q. The average for what period?

A. Well, this here covered the production period for the month of October.

Q. No, but we are not talking about production now; you are talking about purchases of grain. Now, you are getting the average cost of purchases over what period? For October production, Hedgeside wouldn't have to purchase all of its grain in October, would it? A. No.

Q. Well, then, what period are you talking about the average for?

A. It would be the period of production—they broke off [830] producing for audit purposes at the close of each month and at the end of that month, you would have certain available grain which would start your inventories at the beginning of the subsequent month. In addition to that, you would have certain items which were in the process and that would all be tied down to the government records which I have referred to here, I believe, as what was used or put into the operation during that month, government form No. 1598.

Q. Then the 4.43 is not a true average cost of purchases for Hedgeside; it's merely an arbitrary average taken under your contract, is that right?

(Testimony of Earl Johnson.)

A. No, no. The average cost is presumed to be a weighted average cost and in order to determine a weighted average cost, you have not only the purchases which are made within a specified period, but you have what is on hand and available at the beginning of that period.

Q. And where is that in this sheet?

A. In this one it so happens that this is the first production and I believe that in the contract there was certain grain on hand but we don't have it here so there couldn't have been any on hand at the beginning of this here production period. I'm not certain about that without referring back. Here, our starting item was a purchase made on 10-16-47 and delivered to Hedgeside on October 29 and 30. I mean, this was supposed to be all of the grain which was used or was available for use at the time of the contract or at the time of this period of [831] production.

Q. Well, if you took the average cost at the top of the column, assuming there was—opposite the item inventory, October 13 '47 per contract, presuming there was an inventory on hand, you would have taken the weighted average as obtained from the previous month, wouldn't you?

A. That's correct.

Q. Then you would have added that to the total for this month?

A. Yes.

Q. Then you wouldn't have a true weighted average, would you?

A. It would be true weighted average, yes. Yes.

(Testimony of Earl Johnson.)

Q. That's all right, I just wondered. In Schedule 1-b, the information there is obtained from government form 1520.

A. That's right.

Q. That is government form 1520 at Hedgeside.

A. At Hedgeside.

Q. At Hedgeside.

A. That's correct. On Schedule 1-a, the form 1598 is also at Hedgeside.

The Referee: Q. Before we pass this, Mr. Johnson, for my information, getting back to this 1-a, you arrived at that rate per hundred weight by dividing the number of pounds into the amount of dollars, didn't you?

A. That's correct.

Q. Exclusive of any inventory or anything else that might be [832] on hand.

A. That's correct, because your ending inventory which on here you have—the bottom figure, the inventory at October 31, 1948 per form 1598 is also at that same average. That will be carried over into the subsequent month's production or available for the subsequent month's production.

Mr. Fisk: Q. And you divide the number of pounds and then divide that by a hundred to get a hundred weight?

A. Yes, a hundred weight. It's merely a placing off of decimal points.

The Referee: All right, Mr. La Shelle.

Mr. La Shelle: Q. Now, following down here in the lower lefthand corner you have already explained total available or average cost. Now, you

(Testimony of Earl Johnson.)

have "less grain used per 1598 and average cost" is that 1598 the 1598 government form of what went into production?      A. That is correct.

Q. And then you have the inventory October 31, 1947, per form 1598 and average cost, is that what was left over at the end of the month?

A. That's correct.

Q. And that's what you had put out as a starting figure for the month of November.

A. For the subsequent form that would appear on the form 1598 at Hedgeside at the beginning of November.

Q. Now, on the lower lefthand corner, you have 1 and 2. [833] Would you explain what that is for the Court?

A. No. 1—under delivery date of grain, there was certain grain delivered by the Napa Milling & Warehouse Company with drayage charges of \$64.76 (I've got a note when) calculated at 10 cents per hundred weight, pending the receipt of the invoice and note, so we have drayage charges \$74.24 under malt which, as I say, was per phone advice. When there's deliveries made right at the close of the month, for purposes of accounting, we set up or we term unrecorded liabilities, which are not fully established at that time. We don't know exactly what the charge will be. So we determine from the best source available what the rate is expected to be and then that would be adjusted when the actual invoice comes in.

Q. The following month.



(Testimony of Earl Johnson.)

A. In the following month in this case.

Q. All right, now taking your next schedule, which is Schedule 1, you go down that by columns and show to the Court so it won't have to study the whole thing, what is carried over here from Schedule 1-a and 1-b, if anything, and how this is set up.

A. Well, for purpose of explanation, I think it might be better to start with Schedule 1-b; from Schedule 1-b we determined that the total October production was 37,192.13 proof gallons—original proof gallons. That figure is carried over to the center of Schedule 1 and shown as total October production applicable to grain used. "See Schedule 1-b attached, [834] 37,192.13 OPG." Again that figure will appear at the bottom of Schedule 1 as yield of 37,192.13 OPG's.

Q. Just let me stop you on that yield for a moment. The contract, for the purpose of getting a price specification, that runs up a certain yield, is that right?

A. For determining the price paid at the time of invoicing it specified that there would be a price paid in accordance with the terms of the contract. The yield, the actual yield from the production could not be determined until after the month's production had been completed and that figure is shown down here. That will show on the schedule of how the yield was determined.

Q. Now, as you complete the explanation there, I might state, your Honor, that I realize that these

(Testimony of Earl Johnson.)

schedules speak for themselves but it almost takes an accountant to understand them.

A. Well, in Schedule 1-a we determined the amount of grain which was used per form 1598 at average cost. Under "milo" on the next to the last line, we showed that there were 602,940 barrels at an average cost per hundred weight of 4.03083, a total of \$26,715.25, under malt showed that there were 59,950 barrels at an average cost per hundred weight of 8.24651, having a total amount of \$4493.78. Those figures are carried over onto the first money line of Schedule 1 and the line shows two vendors per form 1598, so the figures on that line under milo and malt are the figures which are carried [835] over from Schedule 1-a and the total value shown in the last column on 1-a against that line merely totals the amount columns of the other two sections. Then again, determining an average inventory cost, we would start out with the beginning inventory, of which there was none available. That's shown "plus mash inventory 9-30-47," and we have less March inventory 10-31-47 and again under the sections milo and malt, the inventories in those, number of pounds, the 159 thousand at the average cost 4.43083 and the amount is \$7045.02. Under malt we had a remaining inventory of 15,797 barrels with an average cost of 8.24651 per hundred weight, the amount \$1302.70. We have a total value or a total of the amount columns under milo and malt. So that the total consumed would be our total available for production, less the inventory which is on hand at

(Testimony of Earl Johnson.)

the close of the operating period. So by deducting the figures which I have quoted underneath the underscore, we show total consumed. Should I read the figures again or can I by reference?

Q. Yes.

A. Well, the figures under milo leaves a remaining balance for consumption of 443,940 barrels at the average cost or rate of 4.43083, total amount \$19,670.23, under malt, number of pounds 44,153, the average cost per hundred weight 8.24651, the amount \$3641.08, the total value consumed of \$23,311.31 is the total of the corresponding figures in the amount columns under milo and malt.

Q. Now, on this part here, where you come down to the [836] "chargeable cost per proof gallon," would you run down that with Court and counsel and explain how that's set up?

A. Well, we had this column I have already quoted, the figure of 37,192.13 original proof gallons. We have determined that from Schedule 1-b attached. The material cost per original proof gallon that is determined by taking the total value consumed of malt and milo which we have already determined as 23,311.31 and dividing that by the number of OPG's; that gave us an average cost per OPG of .62678.

Q. That would be cents.

A. Cents, that's right. Then by referring to the contract, our conference allowance for beverage spirits was 12½ cents per original proof gallon. So that the total chargeable cost per OPG for beverage

(Testimony of Earl Johnson.)

spirits would be the total of the two foregoing figures of .75178. Now, again by reference to the contract, there was a differential between spirits produced for beverage purposes and spirits which were acceptable only for redistillation purposes and the two figures were quoted 12½ cents and 5½ cents so that in order to determine the figure which would be allowable as chargeable cost per OPG for spirits to be redistilled. The differential between the 12½ and the 5½ cents was 7 cents. That would be deducted from the cost which was allowable for beverage spirits and we determined from that that the chargeable cost per OPG for spirits to be redistilled would be .68178.

Q. Now, are some of these carried forward now into schedule [837] or Exhibit A?

A. Exhibit A is the final summary schedule covering costs for the month's audit.

Q. Now, will you kindly do this? Take this by column numbers, telling us first, from what source this information was secured, whether a Schenley invoice, Schenley record or Hedgeside, or whatever came about, and then explain this to the Court the way you have the other schedules.

A. During each month's production, we received invoices from Hedgeside Distillery Corporation billing Schenley for the spirits which were accepted for either beverage or redistillation purposes and we paid to Hedgeside Distillery Corporation through the sight drafts which we have already shown, the amounts shown on these invoices. Now, part of our

(Testimony of Earl Johnson.)

support of the payment during the month of production or when, as and if it was accepted by our production department, those invoices supported our voucher copies in our accounts payable department, either in New York or in San Francisco. By reference to those voucher copies, we could determine what had been expended or what had been paid to the bank or through the bank to Hedgeside for those spirits which were turned over to us on warehouse receipts during the month or which were supported by those. We obtained the copies of those invoices or took the vouchers and from those invoices the information on Exhibit A pertaining to the invoice number and date which would be a Hedgeside invoice, the serial numbers which were proved, the number of [838] packages, which would be barrels or drums which were covered on that invoice, the number of original—

Q. Now, just let me stop you for a moment. I notice that most of them are for beverage and then there's two packages, 40 and 47 for redistillation.

A. That's right. Then the number of OPG's which were shown on those respective invoices for the number of packages, the unit cost per OPG for beverage purposes per Schedule 1. On Schedule 1 we determined that the price to be paid for beverage spirits was .75178, the eight we carried it out, we dropped the last figure, so there's .7517, the amount for beverage purposes, therefore, would be the number of OPG's which were accepted for beverage spirits times the .7517 and that figure is extended in

(Testimony of Earl Johnson.)

are amount for beverage purposes. Now, again in the next column, the unit cost per OPG for redistillation per Schedule 1 refers back again to Schedule 1, we determined there that the total chargeable cost per OPG for spirits to be redistilled was .68178, dropping the last digit, determined there that it was .6817. Now, the last two items on Exhibit A shows that there were 40 packages and 47 packages containing 4,032.40 and 4738.07 OPG's respectively, which were spirits which were accepted for redistillation. By taking the number of OPG's just quoted, times the unit cost as determined .6817, and extending that into the next column, we show the amount for redistillation. That is the amount which should have been paid or which was the acceptable cost for spirits for redistillation purposes. We have [839] then a column called the total amount, where one figure is only shown, and that is the totals of the total amount for beverage spirits and the amount for redistillation spirits. The next column termed "total amount per vendor's billings" refers back again to the Hedgeside invoices, the numbers and dates of which show in the next column. The total amounts which were actually paid during the month by Schenley, starting out with \$2737.83 and totaling in that column \$14,322.76 is the amount which was actually paid during the month as provided for in the contract, to Hedgeside. Now, if determined through these exhibits and supporting schedules that the amount which should have been paid for that production on the cost for-

(Testimony of Earl Johnson.)

mula which would have been \$15,555.33, the difference between the two columns showed that the net amount to vendor for this respective production, it's broken down individually, but the total amount was \$1232.57. By referring then to the letter I prepared summarizing this, I showed in the last paragraph of the letter that a check in the amount of \$1232.57 has been drawn and paid to Hedgeside Distillery Corporation to liquidate the amount.

Q. The net amount.

A. The net amount due the vendor as set forth in Exhibit A. That is supported by the copy of the cancelled check which was drawn to Hedgeside Distillery Corporation, the copy of the voucher, and the copy of the check request which was issued as a result of this audit. [840]

Q. Now, you mentioned a copy of the check, isn't that the original cancelled check?

A. Well, no, it's the original cancelled check, I'm sorry.

Q. Now, the rest of these groups in this, what is it—54?           A. 54.

Q. 54 for Identification also have these audits prepared in a similar manner, do they?

A. Yes.

Q. Under your personal supervision?

A. That is correct.

Q. And putting check No. 07108 and those attached papers aside for the moment, could you just run through the balance of those and state whether or not there is anything that needs any explanation

(Testimony of Earl Johnson.)

or any change in the audit or do they follow the same circumstances?

A. Well, take the very next one——

Q. Let me ask you this: You wouldn't get the same cost each time, would you?

A. No, no, I would not.

Q. That would depend upon the cost of grain?

A. It would depend on the yield, the cost of grain and the amounts which were paid to Hedge-side during the month.

Q. What I am getting at is you wouldn't find the same cost per OPG on each one, would you?

A. No, it would be very unlikely that you would have the same cost per OPG.

Q. Now, these attached papers, do they all contain a [841] Schedule 1-b, 1-a, Schedule 1 and Exhibit A and then a letter by you summarizing the schedules? Have they all got that?

A. I believe they do.

Q. Will you just run through them and check them for a moment?

A. Yes, they contain——

Q. They all have the same schedule. Now, referring to the check next in order in this group and the documents in back of it, on your summary to Evers from yourself, at the bottom it would appear that in that particular month, for November, there was a credit of \$342.61, as set forth in Exhibit A. In other words, Exhibit A here shows an overpayment.

A. That is correct.

Q. According to the audit.



(Testimony of Earl Johnson.)

The Referee: What check number is that?

Mr. Fisk: Check next in order is 08549.

Mr. La Shelle: Yes, I keep reading the wrong number. However, there is a check in the number Mr. Fisk just stated for \$457.50 and will you explain to the Court that setup, please?

A. Well, we found from past dealings with the Hedgeside Distillery Corporation that if they owed us money we often had difficulty in collecting it. It would sometimes take us for three or four months to collect a very small item, when we were paying them thousands of dollars, so that if we got a credit item, we always had, in addition to the audit payments, [842] we had payments for warehousing charges, etc., up at Hedgeside. And, in order to make sure that we would not have on our books an accounts receivable from the Hedgeside Distillery Corporation, in payment of all storage bills and so forth, we would apply the credit determined by audit against the payment of any storage bill. So that in this case, we had, as of the end of November, we had storage charges, accrued storage and handling charges for which we had received an invoice from Hedgeside, for \$800.20 and actually we had a credit determined by audit of \$342.61, which Hedgeside owed us. So we applied against the invoice for \$800.20 the credit of \$342.61, giving us a net payment due Hedgeside of \$457.59, for which amount the check was drawn.

Mr. Fisk: Q. Was that pursuant to your contract of October 13, 1947.

(Testimony of Earl Johnson.)

A. No. Not the additional payments which were in there.

Q. I mean, that practice is not a part of the contract. A. Oh, no, no.

Mr. La Shelle: Q. Now, on the third check, No. 09514, dated January 16, 1948 from the summary there, there was an amount of \$2536.72 due. There was no credit there, is that right?

A. There was no credit. The check was drawn for the full amount and paid to Hedgeside.

Q. And the adjustment there was arrived at in the same manner.

A. In the same manner as the first.

Q. As the first audit you explained. And the next check, [843] No. 10930, according to the summary of the audit, which was a credit of \$75.72 and the cancelled check is in the amount of \$332.63 and I take it from that that you used the same offset method that you just testified to before?

A. That is correct.

Q. And does that show by the Bill Correction Memo? Would you explain that to the Court?

A. Well, when we have a credit item, we have invoices for which there is a credit to be applied, generally there is a supporting document issued by the Accounts Payable Department which shows that the credit is being applied against other bills rather than as a payment or as a request for payment from the vendor. So that in one instance, a request for payment or a Bill Correction Memorandum issued by Schenley to a vendor would result in an accounts

(Testimony of Earl Johnson.)

receivable on our books. A bill correction memorandum is a charge-back to the vendor which is applied against other charges made by that vendor, so that we pay a net amount and we have other accounts receivable shown on the books.

Q. So this \$333.63 was storage or other charges, less the credit.

A. That is correct. There's two copies of invoices which show that we had certain storage charges and the accumulation of those storage charges, less the amount of the credit which was determined on the basis of this audit, was paid to Hedgeside Distillery Corporation.

Q. And on the next one, Check No. 12171—

Mr. Fisk: Just a minute, before you pass that. Are those Hedgeside invoices?

Mr. La Shelle: What do you mean by "those"?

Mr. Fisk: The last two documents the witness testified to.

The Witness: They were copies of—copies made up in our office of the Hedgeside invoices. The originals of these have been transmitted to the New York office.

Mr. Fisk: Q. Well, is that a copy, a true copy of the vendor's invoice? A. No.

Q. Or is it just your idea of all the contents of the vendor's invoice. A. We—

Q. In other words, isn't that from a Schenley's form?

A. It's a Schenley's form, that's correct.

Mr. La Shelle: Q. These invoices that you re-

(Testimony of Earl Johnson.)

ferred to here, are those the invoices that have been attached to the warehouse receipts?

A. No, no.

Q. Well, what invoices are they? I don't understand that myself.

A. The invoices which are referred to here where I have copies of the vendor's bills.

Q. Oh, those were storage bills.

A. Those were storage bills.

Q. Oh, I see. [845]

A. And the originals of those bills, the other copies which we received for storage charges by Hedgeside Distillery Corporation, were forwarded to the New York office.

Q. I see. I was all mixed up there myself.

Mr. Fisk: Just a minute. I'm mixed up still.

(Discussion off the record.)

Mr. Fisk: Q. That document that you referred to as the Schenley's form, entitled "copy of vendor's bill" dated January 31, 1948 purports to be a summary of storage charges of both Mountain View and Hedgeside. A. That's correct.

Q. And it also covers handling of grain of both Mountain View and Hedgeside.

A. That's spirits grain. That's the merchandise.

Q. Yes, the spirits grain.

A. The spirits grain.

Q. Well, this is in no sense a copy of any—a true copy of any invoices that have been furnished you by anyone, is it?

A. Oh, yes. It's not a pro-forma copy or any-

(Testimony of Earl Johnson.)

thing, but it contains the information maintained or carried in our San Francisco files for certain original documents of which we only had one which were forwarded to the New York office.

Q. In other words, this is made up in Schenley's office from data that Schenley had.

A. No, it was made up in Schenley's office from the original copy. [846]

Q. How do you know?

A. Because that's standard practice.

Q. Well, you have never seen those invoices, have you?      A. Oh, yes, I have.

Q. Do you have a personal, definite recollection of them now?

A. Of these particular invoices, no. I couldn't say that. But I have, on numerous occasions, seen them.

Q. And, of course, that goes back—it covers a number of months. This is a memorandum, a Bill Correction Memorandum, dated February 18, 1948 and it covers back as far as October, 1947.

A. No, that bill correction memorandum dated February 18, 1948 merely supports the audit papers. The other two items are copies of the bills which were rendered to us by Hedgeside for certain storage and handling charges.

Q. Yes, but storage charges that run back as far as through October '47.      A. That's correct.

Q. So this isn't a credit memorandum or an adjustment memorandum of each month's operation. It's just a credit memorandum of past operations.

(Testimony of Earl Johnson.)

A. No. No, the credit memorandum, this Bill Correction Memorandum, merely covers the one month's operations. That is issued to support the audit report. It's merely a document maintained in our accounts payable files along with this copy of the audit report. The other two documents might mean— [847] might be anything charged by Hedgeside which if we found it were an acceptable charge, we could apply this credit memorandum against.

Q. Well, let me see if this is a fair statement. Then I won't ask you any more questions. As you made up each one of these monthly audits, Schenley always made a point, if it came to its attention, to see to it that there was no credit coming from Schenley to them. In other words, they always—I mean, from Hedgeside to them. They always kept on the black side of the ledger, is that right?

A. That is correct.

Q. No matter how far back it went or what it covered, if they knew of an item that was due to them from Hedgeside which would make a credit or which would make an obligation outstanding in Hedgeside to them, why they would issue this memorandum to do away with it. A. That's correct.

Mr. La Shelle: Q. In other words, as I follow you, whenever there was a credit due under the audit, you looked for something for an offset.

A. To apply that against, that's right.

Q. So that you wouldn't have receivables on your books. A. From Hedgeside.

(Testimony of Earl Johnson.)

Mr. Fisk: Q. Was that applied on a Hedgeside bill? It was applied to an obligation of Franciscan, too, is that right?

A. The invoices, as we received them, were Hedgeside invoices [848] covering storage of certain items. I didn't pass on these particular items. I probably would have if I'd have had them. But if we had certain barrels of merchandise for which we were rendered storage charges by Hedgeside and we knew that we had them in these certain warehouses and we weren't getting any duplicate charges from anybody else, that would be up to our bulk merchandise department to designate passage of those charges and we would pay this normally.

Q. While you're on that subject, your audit sheets show who was the vendor of the grain. It doesn't show who was the purchaser of the grain or the recipient.

A. Well, the recipient of the grain in all production at Hedgeside, would be Hedgeside.

Q. You mean, that's your statement. But your record doesn't show that.

A. I mean, there's certain things we understand as we go along. These reports——

Q. Well, I think if you look through the Franciscan that isn't true.

A. Oh, yes, I think you will find——

Mr. Fisk: All right.

Mr. La Shelle: All right, we're through with this now.

Mr. La Shelle: Q. Now, the next one is check

(Testimony of Earl Johnson.)

No. 12171, which according to the summary there was no credit here; there was an amount due of \$1999.84 and that was the amount of the check so there [849] would be no credit due there.

A. That's correct.

Q. And then the audit was made in the same manner and set up in the same way as you previously testified on the first check.

A. That's correct.

Q. And then on Check No. 13520, (this seems a lot quicker)—

A. You have got two of them there.

Q. Oh, I'm sorry. 13520, according to the summary letter there was no credit due but an amount due of \$2489.35, which is the amount of the check and was this made up the same way you testified as the first audit papers?      A. Yes.

Q. Then on the next check, No. 14599 (there is a lot of stuff here) perhaps you better take a look at the letter of summary here and explain that to the Court.

Mr. La Shelle: Short recess all right, Your Honor, for a few minutes?

The Referee: Fine.

(A brief recess was taken.)

Q. Showing you the last check in this group, 54 for Identification, No. 14599, referring to the summary of the audit, I note from the summary that this was the final audit, is that right?

A. That's correct.

Q. And was there a credit on the audit here?



(Testimony of Earl Johnson.)

A. We determined that we owed Hedgeside an additional \$441.91 for the production. No, that's wrong. They owed us—as a result of the production, they owed us \$441.91. [850]

Q. Now, I notice a check here again is in the amount of \$1500.39 and did you take offsets there as you have testified before?

A. Yes. At the time that this audit report was put through, it was found by our accounts payable department we had several other charges made by Hedgeside for storage and handling and the accumulation of those bills was made and the credit was applied against that.

Q. Is that shown in the summary there?

A. That is.

Q. And this group here, of Petitioner's Exhibit No. 54 for Identification, we offer these in evidence now, Your Honor, as Petitioner's Exhibit in evidence, No. 54.

Mr. Walsh: Your Honor please, on behalf of the trustee, I am going to object to the introduction in evidence of these documents designated as Petitioner's No. 54 for Identification on the grounds that the proper foundation has not been laid and on the further ground that these documents in no way tend to prove or disprove any of the issues in this case, on the further ground that the testimony of the witness, some of the evidence that was set forth in these various documents, is not the original evidence. It is evidence that is secured from original documents which are not attached to the vari-

(Testimony of Earl Johnson.)

ous documents. Now, the witness testified that some of that documentary evidence is secondary. His testimony is that the original documents are either at the Hedgeside [851] Distillery or in the office of Schenley in New York.

The Referee: Well, before we get to Mr. Fisk, let's take Mr. Walsh's objections one by one. The witness did testify that some of these documents were computed by Hedgeside from original documents received from Hedgeside, which original documents were forwarded to New York, isn't that correct?

Mr. Ward: Pardon me, Judge, you said "computed by Hedgeside."

The Referee: I mean, computed by Schenley, by your office in Schenley's.

The Witness: That is correct.

The Referee: And the original document that Schenley received was sent to your New York office.

The Witness: Might I explain that, Your Honor?

The Referee: Before you explain it, let's get all of the documents that we are referring to so we will know what we're talking about here. For instance, let's take "copy of vendor's bill."

Mr. Walsh: Attached to what check, Your Honor?

Mr. La Shelle: What check number?

The Referee: That's what I am going to get. Which is attached to No. 10930, and the document that I am referring to is dated January 31, 1948 and the title of it is "copy of the vendor's bill."

(Testimony of Earl Johnson.)

Now, am I correct in stating that certain of the information on that particular [852] document is made up of an original document that is not attached to this exhibit.

The Witness: That is correct.

The Referee: And the original document was received by Schenley and it's either in your New York office or in any event, it's not here now.

The Witness: That's correct.

The Referee: And the computation or the collection of data that appears on this January 31, 1948 data was prepared from some other document or group of documents.

The Witness: That's right.

Mr. La Shelle: I don't think so, Your Honor, and perhaps I haven't made myself clear. The purpose of this evidence is simply to show that Schenley made the payment to Hedgeside required under the contract; the contract which is in evidence of October 13, 1947, called for estimated invoices as they came through, which are in mostly these other exhibits, and then the contract provided for an audit under a certain price summary which the witness has explained, which is the average cost of grain, plus 12½ cents a proof gallon for beverage spirits and 5½ cents a gallon for redistillation. Therefore, monthly this audit was made and those costs were determined and offset against the total amount under the contract, was the amount paid as the [853] invoices came through on the partial payment as provided for by the contract. So there

(Testimony of Earl Johnson.)

might be a net amount to Hedgeside or there might be a credit. The estimates made as they were, in a few instances, they were overpaid.

The Referee: I appreciate that, Mr. La Shelle, but who did the calculating?

Mr. La Shelle: Mr. Johnson.

The Referee: And where are the original documents that he used in his calculations?

Mr. La Shelle: Well, Your Honor, this was made up in the regular course of business as an audit, not made up for this litigation; it was made up at the time from 1598, from 1520's, from the invoices in question, together with the partial payment from their costs of grain and everything and is admissible under the Business Records Act.

The Referee: Well, isn't the trustee and the Anglo Bank entitled to examine the documents that go to make up this calculation that Schenley's have made?

Mr. La Shelle: No. If they have any evidence to show that this did not constitute total payment, they can show that. But this is an audit made up in the regular course of business and one of the reasons for the Business Records Act making these admissible, is the great trouble, the time and cost and expense, and in some [854] instances, the impossibility of getting all of these documents and putting them in.

The Referee: Well, these documents are in the possession of petitioner.

Mr. La Shelle: Yes, but that is a document

(Testimony of Earl Johnson.)

which simply supports, for accounting purposes, their audit, and that was taken solely for an offset. The amount due was a credit in favor of Schenley and they didn't want a receivable on their books so they looked around for an offset. Now, the cancelled check shows that it was cashed and accepted by Hedgeside. Therefore, as between Hedgeside and Schenley, that's certain evidence that that was sent to them.

The Referee: That's not binding on the trustee and the creditors and the bank, is it? The check, in the final analysis, as I understand it—I can be wrong, but the check in the final analysis is only the result of certain calculations made by the accounting department of Schenley's. And they either gave him a credit or they gave him the full amount or gave you credit for an offset that they maintained that Hedgeside owed them. Now, to make up the copies of this vendor's bill that I have referred to, Schenley's had an original invoice. They may have made other original documents. This amounts to me nothing more than a summary.

Mr. La Shelle: This amount here, if you look at the schedule—I'm not an accountant myself—if I'm not mistaken, on Exhibit A invoice number and date, those are the invoices which are here in evidence.

The Referee: Are all those invoices in evidence that are listed?

The Witness: No, because there's some of these items have been used since the date of production.

(Testimony of Earl Johnson.)

The only thing we have in evidence is what is actually on hand in IRBW No. 2 at the present time.

The Referee: Just a minute, then. Let me ask Mr. Johnson a question. You take a look at this copy of the vendor's bill dated January 31, 1948 that is attached to the papers in the group check No. 10930 and tell me whether or not there are any original documents that were used in arriving at the information appearing on copy of vendor's bill that are not now in evidence in this proceeding?

A. Yes. Now, I might explain that, Your Honor.

Q. In making up the audit papers, the figures which we determined on this summary of auditing is the important figure pertaining to this contract. The other invoices or copies of support here which are shown in support for this particular payment have no connection with the contract. They're merely incidental to that, Your Honor.

Mr. Fisk: Just a minute, Your Honor. I don't think that is a proper statement. He is trying to give [856] us the law now.

The Referee: Now, here, I think that the practical answer is this. That in the event that this copy of vendor's bill and any other exhibit, without looking at them all particularly, but I know about this one—in the event that they're not necessary to prove the petitioner's case, let's eliminate them from the proceeding, but I think that the objection is good where there is an attempt to put in secondary evidence when the petitioner itself has the original documents in its file by the witness' own testimony.

(Testimony of Earl Johnson.)

Mr. La Shelle: Let's get at it this way, Your Honor, just as a matter of discussion.

The Referee: Go ahead.

Mr. La Shelle: On the cases, take check No. 07108, where there is no—they didn't utilize any offset method, there you have simply a check, the voucher, the check, the summary of the exhibits, and the various schedules and the summary shows that they have \$1232.37 coming and that is the amount of the check. Now, solely for the purpose of illustrating, that is admissible. There is no offset involved there. Now, if that is admissible under the Business Records Act, the fact that they took an offset doesn't change the admissibility of showing the amount due under the contract and if they paid it in that fashion, it still comes under their business [857] records. In other words, the only thing here which appears to you apparently, this has to do solely with the offset because they looked for an offset, they had a credit coming for it, they found this as an offset, as Mr. Johnson said, they didn't want to have the Hedgeside receivable on their books so they just deducted it, but that does not change it, in my opinion, any different from check No. 07108, because as Mr. Johnson pointed out, the important thing here is the net credit or the net amount due as shown in the summary of the audits. Now, in this case of 07108 there was no credit due; they owed Hedgeside money, so they sent them the full amount. Now certainly, check

(Testimony of Earl Johnson.)

No. 07108 and supporting documents are admissible under the Business Records Act and——

Mr. Walsh: May I——

The Referee: Just a minute, Mr. Walsh. Are you finished on that, Mr. La Shelle?

Mr. La Shelle: Yes.

The Referee: Let's just assume for the purpose of our discussion here and that's all it is, is a discussion, that instead of having a very involved case here, that the trustee and the bank only have one transaction. I mean, that's the entire case, made up of the goods listed in these accompanying documents on 10930, check including the supporting documents. Now, that's all [858] there is. There's no other matter concerning the trustee or Schenley's or the Anglo Bank. Is it your contention that they would not be entitled to see the original documents that make up this copy of the vendor's bill where Schenley has made their own calculations?

Mr. La Shelle: Well, you mean, there was no contract like——

The Referee: Let's say there is nothing else, that this is the whole case and you are offering these documents in evidence. Now, is it your contention that the trustee and the Anglo Bank would not be entitled to see the best evidence that goes to make up those documents?

Mr. La Shelle: Well, in that case, such a thing couldn't exist because you can't have an offset unless you've got a credit.



(Testimony of Earl Johnson.)

The Referee: Let's say then that they had one contract and there was only one transaction.

Mr. La Shelle: And that they were trying to prove——

The Referee: And you were trying to take credit for those items on there, that Schenley on their own calculations in their own audit department were responsible for and the trustee and the Anglo Bank said: "Well, let's see the original documents; let's see the original invoice; let's find out whether or not that much goods were shipped to Schenley," and so forth. [859]

Mr. Ward: If I may be heard on that, Your Honor, if we were attempting to show and there was some issue as to whether or not there was an offset or whether or not these other bills that the offset was taken on was involved in this case in some way, what you say would be true. All we are attempting to show is that a final check was drawn in payment and was accepted by Hedgeside for certain whiskey. The fact that we deducted from that check some money they owed us because of some other bills, we don't have to bring in all the other bills to show why that deduction was made. The fact is a deduction was made and apparently accepted by Hedgeside, the ultimate issue being, did we pay them, not the ultimate issue being are there some other bills here as yet paid or unpaid.

The Referee: Would that be binding on the trustee and on the bank? For instance, to take the extreme case, supposing that Hedgeside and Schen-

(Testimony of Earl Johnson.)

ley were in the layman's language "in cahoots" with one another and they had already issued warehouse receipts to the bank, whether they were duplicate receipts or original receipts or secondary receipts or anything else, and then subsequently they went into bankruptcy. The mere fact that Hedgeside had accepted the check that is the basis of these documents, would you say that precluded the bank and the trustee from going into an examination of [860] the original documents that were to make up the check, even though Hedgeside accepted the check in payment or would they be entitled to see on what basis those calculations were made?

Mr. Ward: I think if they have any suspicion of that sort, they would be entitled to subpoena those records, but I don't think that would have any relevancy to the admissibility or non-admissibility of an audit report prepared in the regular course of business and submitted as such.

The Referee: Then following your statement, Mr. Ward, why then are these particular supporting documents important in the case at all?

Mr. La Shelle: I think, your Honor has got your fingers on it and I was about to say this. I think that our offer of evidence—I am thinking out loud here—should be limited to these groups where the audit shows an amount due and a check in that amount. The evidence on the other groups should be limited to the audit showing we had a net credit and overpaid the goods and the rest of the stuff not go in because as for as the bank and the trustee are

(Testimony of Earl Johnson.)

concerned, if we overpaid it, why it doesn't make any difference, but the audit shows we more than fulfilled our obligation under the contract. In other words, the audit is the important thing—is the audit figure. [861]

The Referee: Yes, but, Mr. La Shelle, your audit figure is based on certain original documents, isn't it?

Mr. La Shelle: No, no, the audit—the amount of net credit or the amount due is not based in any manner, shape or form upon this vendor's bill. It doesn't play any part in it, because that was used as an offset. In other words, the audit shows in this particular case, that Schenley had a net credit of \$75.72; under the contract they had overpaid to that extent in that month.

The Referee: Now, let me interrupt you. Let's stop a moment. How would Schenley know that that figure there—just a minute, now, where did they get this figure \$75.72?

The Witness: Your Honor, if I may——

The Referee: Surely.

The Witness: That figure would be from copies of vendor's invoice. Now, some of the copies——

The Referee: Now, stop there. Now, where are the vendor's invoices?

The Witness: The copies of the vendor's invoices——

The Referee: Never mind the copy. Where are the vendor's invoices?

(Testimony of Earl Johnson.)

The Witness: These would be in the files of Schenley.

The Referee: Where?

The Witness: Either in the New York office or in San Francisco. [862]

Mr. La Shelle: Some of them here.

The Witness: Now, some of them are in here.

The Referee: And others are not.

The Witness: The only ones which would be in here would be the ones where the spirits are presently in storage in IRBW No. 2.

The Referee: But some of them are not.

The Witness: Some of them are not.

The Referee: And this \$75.72 figure that Mr. La Shelle and you and I are talking about now was arrived at by the use, in some instances, of invoices that are not here in court.

The Witness: That's correct.

Mr. Fisk: Your Honor, may I interrupt? This is related to the objection that I am going to make or an extension of Mr. Walsh's.

Mr. Fisk: Q. These audits, Mr. Johnson, that you made here, they are the audits that you made in settlement of your monthly account under the October 13, '47 contract with Hedgeside, isn't that correct? A. That's true.

\* \* \* \* \* [863]

The Referee: Now, just a minute, Mr. Walsh. Mr. Johnson, are you familiar with other documents in this exhibit that's under discussion?

The Witness: Yes.

(Testimony of Earl Johnson.)

The Referee: Tell me all the sources of information [889] with reference to these documents. In other words, whether it's an audit made by you people or whether it's a corrected bill or what it is. Tell me what is the source and the various sources of information that appears in this exhibit.

The Witness: Well, in any of the exhibits, there would be three prime sources. First, there would be the documents which were made or supported the payment made to either Hedgeside or Franciscan during the month in which the merchandise was produced and for which we were billed as Schenley Weekly—

The Referee: Wait a minute, now. Go on, where is that information?

The Witness: Well, that would be—

The Referee: No, I don't mean in here. I mean, the original document.

The Witness: That's in the files of Schenley Industries, Inc. at the present time.

The Referee: Where?

The Witness: Either in New York or in San Francisco.

Mr. Fisk: And what documents? Enumerate them. There's only three.

Mr. La Shelle: Now, wait a minute. Just let's have this understood. The Court is questioning. Let the Court ask the questions and then let Mr. Fisk ask some later. [890]

The Referee: Well, I would accept Mr. Fisk's offer because it's on the same point that the Court

(Testimony of Earl Johnson.)

had in mind. I'm trying to get what are the basic sources of information and two, where are the basic sources of information located.

The Witness: Back in each payment which is made and shown in these documents are the groups of exhibits which have been previously put into evidence, consisting as I stated before, of the basic contract, the copy of the warehouse receipt, the copy of the cancelled check and the—and when I say copies here, I mean, generally, the originals. My terminology may be wrong. And the vendor's invoice. Those four basic payable documents have supported all of the items which are shown as payments here up to the final audit payment. Those are in the files of Schenley Industries, Inc. either in New York or in San Francisco as I have previously testified.

Mr. La Shelle: May I ask a question here, along the lines of Mr. Fisk?

Mr. La Shelle: Q. Are those also in the possession of Hedgeside? A. No.

Q. In other words, when you made the audit, did you check Hedgeside's invoices, too?

A. At the time that the audit was made, there were copies [891] of the vendor's invoices which had been submitted to Schenley and for which payment requests were made to Schenley. Those copies were available in the files of Hedgeside or Franciscan and were used at the time of audit as a check against the information which we had.

Q. In other words, as I get it, you wanted to see

(Testimony of Earl Johnson.)

if the invoices in Schenley's possession tallied or balanced with the invoices in Hedgeside's possession at the time of the audit.

A. That is correct. In other words, Schenley would have certain documents which were not available at Hedgeside or Franciscan. Franciscan or Hedgeside would not have the cancelled check, they would not have the original of the invoice nor would they have the original of the warehouse receipt, but at Hedgeside they would have copies of the invoices which had been submitted to Schenley at the time of the original request for payment.

The Referee: Let's stick with my original question.

The Referee: Q. Now, you state in here where government form so-and-so was used. Was it?

A. Yes.

Q. Where is that form?

A. At either Hedgeside or Franciscan.

Q. Now, what other information did you use?

A. Form 1520, the government form 1520 is on the premises of either Hedgeside or Franciscan and were used at the time of [892] our audit and were in our possession at the time of our audit.

Q. What other documents were used?

A. The copies of the vouchers and so forth issued by Hedgeside and Franciscan in payment of certain grains and so forth used in the production.

Q. And where are those documents?

A. Those are on the premises of Hedgeside or Franciscan.

(Testimony of Earl Johnson.)

Q. All right. What else in arriving at the audit?

A. In arriving at the audit, that's all I can think of offhand.

Mr. La Shelle: I think you mentioned contracts.

The Witness: Yes.

Mr. Fisk: Q. What about sight drafts?

A. Sight drafts. At the time of the payment—now, there would be no sight drafts in connection with the particular documents which are now in question. The sight drafts—all sight drafts covered the original payments which, under the contracts, were termed partial payment during the month of production. Those, as I have stated before, I have endeavored to locate and have not been able to except in certain few instances where we obtained them from New York. The copies of those sight drafts, I don't know. We did not have to use those at the time of the audit.

The Referee: Q. There's no sight drafts——

A. There's no sight drafts in there.

Q. In this 54. A. No.

Mr. Fisk: But this 54, your Honor, is a summary of the partial payments that they made pursuant to sight drafts or invoices as the case may be, or both. In other words, this is just a balance of the sum that he claims they owe.

Mr. Fisk: Q. But this audit includes an examination and a summarizing of those other records, to-wit, the partial payment, the check, the sight draft, the invoice, and the warehouse receipt.

A. That's correct.



(Testimony of Earl Johnson.)

Q. Those all support your partial payment.

A. That's correct.

Q. Now, these other documents are, the supporting documents are merely government form 1520, government form 1598—

A. The Hedgeside or Franciscan invoices. That is, the vendors, or payments made to vendors, by Franciscan or Hedgeside.

Mr. Fisk: That's right.

Mr. La Shelle: Q. That's for grain.

A. Yes, for grain.

Mr. Fisk: Then, on the basis of that, as far as the partial payment is concerned, I assume that your partial payment documents are already in here; you've [894] already offered them.

Mr. La Shelle: No.

The Witness: They're in in part.

Mr. La Shelle: They might probably be—ninety percent of them here, but the ones that were used up that were taken out of the warehouse, of course, aren't here. They're not pertinent, but I suppose most of them are, but not all of them, because some of that stuff was withdrawn and used and I suppose where they had it in the warehouse, there wasn't any particular system used as to what they withdrew first.

Mr. Fisk: Then that wouldn't be available to us.

Mr. La Shelle: The purpose of the audit is simply to show and to calculate under the terms of the contract the cost-plus basis and whether there was a credit or a debit due, and that was done.

(Testimony of Earl Johnson.)

The Referee: Are there any documents in this matter in the possession of Schenley that wouldn't be available to the respondents?

Mr. La Shelle: No, they could—naturally, everything that Hedgeside has, the trustee has.

The Referee: No, but I'm talking about in the possession of Schenley.

Mr. La Shelle: I don't quite get your question there.

The Referee: Well, Schenley must have some original [895] documents that the respondents here don't have access to, do they not?

Mr. La Shelle: You mean, invoices that aren't in this group?

The Referee: Including invoices. Do you, Mr. Johnson?

The Witness: I think I can see what you're pointing at. If I might explain that a little bit, I think it can bring this out. We'll say that for example now, we had purchased 10,000 barrels of merchandise from Hedgeside under the Hedgeside contract, at the present time, of those 10,000 barrels, we'll say that 4,000 barrels are now in IRBW No. 2. In support of those 4,000 barrels which are in question, all documents in support of those 4,000 barrels have been presented and are in evidence. However, the other 6,000 barrels, sometime before last June, that merchandise had been consumed, withdrawn or transferred from IRBW No. 2, or whatever warehouse it was in at the time that the net by Schenley was found, that was transferred out and were con-

(Testimony of Earl Johnson.)

sumed or is now in storage in other warehouses and is not in question in this suit, so that the supporting documents showing partial payment for that additional 6,000 barrels would not be in evidence in the court or would not be available. [896]

Mr. Fisk: Q. But in order to verify your audit, you would have to be able to——

Mr. La Shelle: No.

A. At the time——

The Referee: Wait a minute.

Q. Isn't that true?

Mr. La Shelle: No, your Honor, because that audit was made at Hedgeside. First, they determined the cost of grain under the contract. That was done entirely out of Hedgeside books, not ours; that was done entirely on Hedgeside's books, plus the 1598 and the 1520 forms. Now, if anyone has any question as far as the bank or the trustee is concerned, as to the correctness of this audit, they can take this audit and go to Hedgeside and verify or dispute that audit right out of Hedgeside because Hedgeside's invoices will show what the partial payments should have been. Now, if we didn't balance with their invoices, they could show it out of Hedgeside's books as soon as an accountant can go through them. That's all that can be done without reference to Schenley's books at all.

Mr. Fisk: Well, your Honor, I would like to have the Court ask Mr. Johnson that question.

The Referee: You can ask it.

Q. Mr. Johnson, in order to verify your audits,

(Testimony of Earl Johnson.)

taking your example of the 6,000 barrels, would you not have to examine [897] those documents that supported the 6,000 barrels?

A. At the time when our summary, I believe it's—May I refer to this?

The Referee: Surely.

A. (Continuing): At the time that the invoices were being processed through payment which was received from either Hedgeside or Franciscan covering the amounts of payment shown on Schedule A and the number of proof gallons, etc. which were shown on Schedule 1-b, those documents, the invoices and the support for those payments were processed through my department and that information was built up from those invoices. Then at the time of audit, that information was checked to the files of Hedgeside or Franciscan, as the case might be; they had duplicates of those particular invoices and that showed identical information with that. Does that answer your question?

Q. No.

A. At the time of audit, yes, we had. I mean, that would be the answer.

Q. The answer is yes.

A. At the time of audit, those documents were available to us.

Q. That's right. And all of those documents upon which your audit is based here are now in the possession of Schenley, isn't that true, regardless of who else might have possession of all of those, or in the possession of Schenley? [898]

(Testimony of Earl Johnson.)

A. Not all of the documents. The documents which cover—the government forms, the Hedgeside——

Q. I am not talking about all of the documents. I am talking about the 6,000 that were necessary to examine in order to verify your audit.

A. The documents in support of partial payments made, yes.

Mr. La Shelle: If I might——

Mr. Fisk: Wait just a minute. Just let me finish this. If your Honor please, let me illustrate one of the vices of what Schenley is endeavoring here. On Schedule 1-a of group attached to check 09514 and I think this follows the same scheme throughout in the schedules, which has to do with Hedgeside, that is a detail of grain purchases of Hedgeside for the month of December '47. In the second column from the left, it shows vendors and it lists the vendors. Nowhere in that document does it show who the vendee under those invoices that were examined there, was. Now, when we go to the Franciscan documents, the same thing is true. As a matter of fact, there was an awful lot of juggling around between Franciscan and Hedgeside as to grain. In other words, Hedgeside would be purchasing the grain and turning it over to Franciscan, and then there may have been some subsequent juggling around with the books. Now, with these documents going in here this way, it doesn't show the true fact. [899]

The Referee: Mr. Fisk, with reference to 1-a, I don't know what the fact is, but as far as the ex-

(Testimony of Earl Johnson.)

hibit is concerned, it would appear that the vendee in all cases was Hedgeside Distillery.

Mr. La Shelle: Yes.

The Referee: It says it at the top.

Mr. Fisk: Well, it says that.

The Referee: Well, I say, I don't know what the fact is.

Mr. Fisk: The original documents won't support it and the same thing with Franciscan. Now, they all were purchased by Hedgeside, but most of Franciscan's grain was purchased by Hedgeside too.

Mr. La Shelle: Your Honor, I think I have what may be a fairly simple solution of this case. Let us just assume for a moment that neither Frank nor Mr. Fisk are satisfied that this audit is correct. What, in the normal course, would they do? They would take the contract, together with the terms of the cost-plus, they would make their own check on the audit, go through the 1598 forms, the 1520 forms and go through these invoices here, you see, then they would take——

Mr. Fisk: Of Franciscan too?

Mr. La Shelle: Yes.

Mr. Fisk: Have we got free access to Franciscan?

Mr. La Shelle: Why certainly you have. [900]

Mr. Walsh: Oh, now, Mr. La Shelle.

Mr. La Shelle: You certainly have; you can subpoena their books in a minute.

Mr. Walsh: That's just what you can do. That's just exactly it.

Mr. La Shelle: We're confessing they've got

(Testimony of Earl Johnson.)

every right in the world to come in and show evidence against us and which I warrant they will never do, but be that as it may, if they were checking for their own satisfaction to find whether this audit was right, they first take the thing to calculate the cost of what they should be paid, don't you see, and they take the 1598's and 1520's and these invoices on the grain. From those alone, they can calculate from the contract what the entire payment should have been. Then they would go to see the partial payment and they would total up the invoices that were paid partially. Now, they are not going to accept Schenley's invoices on that. They're going to look at Hedgeside's invoices and if Hedgeside's invoices show that a Thousand Dollars less was paid, then their invoices show they're going to come in here and yell to High Heaven: "You owe us another Thousand Dollars"! They're going to go in Hedgeside's invoices, not ours. Now, if Hedgeside's invoices, on an example, don't tally with Schenley's invoices, then they go to check with us maybe and if they do, they could have [901] them. But they're going to go on Hedgeside's records, not ours, because we're the enemy. They're going to accept their's and they're going to contend that whatever that are, are right.

Mr. Walsh: If your audits go in, will you stipulate we can counteract the audit?

Mr. La Shelle: You can make an audit any time you want.

Mr. Walsh: No, but will you submit that *are*

(Testimony of Earl Johnson.)

counter-audit may go in in evidence as audit in this proceedings opposed to your audit?

Mr. La Shelle: No, because it's not made in the regular course of business. But as far as that is concerned, there never will be any audit made. But here is the thing. They have every right to go in and they can do it from Hedgeside's books alone and check this audit if they want to. Here is a situation where, Mr. Walsh, it applies particularly to Hedgeside, as attorney for the trustee he has access to everything, is he prepared at this time to make an offer of proof or even a statement based on any tangible evidence that he has good reason to believe that this audit is not correct? He can't do that. He has nothing in their books to show it. They cashed these checks; they took the amount of the audit. Now, there is your prima facie showing. Now, if there is anything wrong [902] with them, they can prove it. Otherwise, there's no such thing. Here is an audit that was made at the time and acted upon between the two parties; they took the checks and they were cashed in the amount where there was anything due. Forget the overpayment. We're out that much money as far as this case is concerned.

Mr. Walsh: Your Honor please, I submit that where the audit is based upon certain records which are available, not in the possession of Schenley and not part of their records, the Business Records Rule does not apply. It's no different, if your Honor please, than if Mr. La Shelle would separate from this so-called audit this statement regarding the



(Testimony of Earl Johnson.)

amount of grain used in the production of the distilled spirits. Now, if he attempted to introduce that in evidence, he would be met with the objection that is not the best evidence, produce the original. Now, the originals are available and he can subpoena them. He states to us, if your Honor please, states to the bank and to the trustee, that those records are available to us and we can examine them. That is the vice of the whole situation. He is trying to introduce in evidence, secondary evidence on the theory that it is part of their records. These documents are not part of the records of Schenley; they are part of the records of the Hedgeside Distillery and the Franciscan Farms and when the petitioner attempts to [903] introduce in evidence any of those records, he must produce the originals and not try to introduce indirectly, secondary evidence on the theory that the Business Records Rule—

Mr. Fisk: This is hearsay upon hearsay. It's an auditor's examination of a government agent's records of certain transactions that presumably took place with respect to Hedgeside and Franciscan.

Mr. Walsh: Your Honor please, Mr. Fisk hit the nail on the head when he stated that in some of these exhibits, the check was paid before the audit was even prepared. And how can you possibly introduce in evidence under the Business Records Rule, a compilation of documents which were not even in the possession of the petitioner, when the audit was made and the check was already paid in cash—was

(Testimony of Earl Johnson.)

already issued and cashed by the Hedgeside Distillery?

Mr. Ward: Your Honor, may I comment upon what Mr. Walsh has said about the best evidence rule under the Business Records Act? It seems to me that the act was probably designed to cover the best evidence rule in the case of the business records where the business record itself is an original business record and these, we submit, are offered and are original business records. Now, if there are other documents backing them up, under the Business Records, provided they themselves are original records [904] standing on their own two feet. Now, the same thing which Mr. Walsh has said, of course, is perfectly true when applied to any ledger of any kind, because a ledger, not being an original book of entry, you would have to go back to the journal and from the journal to the bills and the invoices, but that does not mean that a ledger is kept out of evidence because of the best evidence rule. The best evidence rule simply does not apply if the business record you submit is itself an original record.

Mr. Fisk: Here is a perfect example of what counsel is talking about. During the war, a lot of corporations, particularly large contractors, knowing that there is always a lot of difficulty arising after a war on the various contracts, a lot of them had auditors, accountants in their organizations and monthly making an audit of all of their records to support any controversy that might come up in the future with the government with respect to what

(Testimony of Earl Johnson.)

they did. Now, I submit that they couldn't possibly introduce that in evidence at a subsequent controversy that arose between the government and that contractor simply because they said "we had an auditor do it currently as we went along." They weren't recordings of acts, events, transactions, or occurrences. It's purely and simply a self-serving document. [905]

Mr. La Shelle: If the Court please, these are admittedly secondary evidence under the Business Records act. They're not conclusive. They can be disputed. As the Business Records Act itself says, the objections go to their weight, and not as to admissibility.

Mr. Fisk: What kind of evidence can't be disputed? What has that got to do with it?

Mr. La Shelle: If you don't think that audit is correct, you can go right to Hedgeside and Franciscan and check it or if it isn't correct, say we put in two phony invoices, and everything. I'm satisfied, your Honor. I am perfectly willing to submit the evidence in the revised offer.

The Referee: Submitted? The revised offer, objection is overruled; 54, becomes 54 in evidence, subject to the correction and statement of Mr. La Shelle.

Mr. La Shelle: It's a little after twelve, your Honor.

The Referee: Very well.

Mr. Walsh: Now, for the purpose of the record, what is this——

(Testimony of Earl Johnson.)

Mr. La Shelle: I have already made it.

Mr. Walsh: I would like to have it again.

Mr. La Shelle: Now, read it. I am not going to make it twice.

Mr. Walsh: If your Honor please—— [906]

The Referee: Just a minute, Mr. Walsh, I'll come to your assistance.

Mr. La Shelle: I just don't like to say the same thing twice because I'm afraid I'll say it differently.

(Discussion off the record.)

The Referee: In the group starting with the check No. 08549, in that group the check is not in, the voucher is not in, the bill correction memorandum is not in; Invoice No. 10504 is not in.

Mr. Walsh: What's that one?

The Referee: That's an invoice that is in the same group. It's the invoice that is not in. Now, those documents in that set I gave you are not admitted.

Mr. La Shelle: They are considered marked for identification.

The Referee: Now, in the check No. 10930, the check is not in and the voucher is not in and the bill correction memorandum is not in, and in check No. 14599 the check is not in, the voucher is not in, the bill correction memorandum is not in, and the six invoices are not in, which means that the sheets with checks No., and accompanying documents, 12181, 07108, 09584, and 13520, those are incomplete. Two o'clock, gentlemen?

Mr. Walsh: Now, I heard Mr. La Shelle state

(Testimony of Earl Johnson.)

for the first time that he wanted the other documents not admitted in evidence, still to remain for identification. [907] Now, what number are you going to call those?

The Referee: Well, I would have no objection if counsel has no objection, if we just took them off this set. You have no objection to that; then they're out of here completely.

Mr. La Shelle: It's all right with me.

Mr. Walsh: He made the statement he still wanted them in identification.

Mr. La Shelle: No, I don't want them in. I just said they could be used for identification.

Mr. Walsh: That's just the reason I wanted to go over this matter and clear it up. Now, do you want them for identification or not?

Mr. La Shelle: I said they could be considered for identification. If you don't want it in and the Court's agreeable, I'll take them out right now.

The Referee: What would you gentlemen prefer? The documents have been marked.

Mr. Walsh: I think they should go out so the record will be clear.

The Referee: I just thought maybe later on when this matter reaches some higher tribunal, when these are marked for identification, you could say—

Mr. Fisk: Leave them in.

Mr. Walsh: What number are you going to give them?

Mr. La Shelle: If they're marked for identification, [908] they can't hurt.

(Testimony of Earl Johnson.)

The Referee: I'll mark them 54-a for Identification.

\* \* \* \* \* [909]

Afternoon Session—2:00 o'clock p.m.

The Referee: Well, Mr. Johnson, I think that Mr. La Shelle has a couple of questions. Do you, Mr. La Shelle?

Mr. La Shelle: Yes.

The Referee: Mr. Walsh, you were the last one that was asking Mr. Johnson a question.

Mr. Walsh: Yes.

The Referee: Are you finished temporarily?

Mr. Walsh: Yes.

Mr. La Shelle: May the record show that your cross-examination is not lost in the storm?

(Discussion off the record.)

### Redirect Examination

Mr. La Shelle: Q. Mr. Johnson, before we recessed at noon, I believe you testified that when you went up there, (I think it was on the physical inventory) from the government records and barrels themselves, you couldn't tell who the spirits belonged to, is that right?

A. No, I couldn't. [1129]

Q. And from the government records or the barrels, can you ever tell who the merchandise belongs to?

Mr. Walsh: Just a minute, your Honor please, I am going to object to that as not proper redirect.

(Testimony of Earl Johnson.)

Mr. Fisk: It is irrelevant, incompetent and immaterial.

The Referee: Sustained.

Mr. La Shelle: Your Honor, if I may be heard on that, the question was whether they could tell from the government records or the barrels themselves whether any of this whiskey belonged to Schenley and he said no, and that's quite true, the implication perhaps being that we forgot to mark them. I am developing that in no instance would the government records or barrels show ownership. There is not even any provision on the government form for it. They're not interested in it.

Mr. Fisk: I don't think this witness can answer that question.

Mr. La Shelle: I think he can.

Mr. Fisk: Whether you can ever tell.

Mr. Walsh: If your Honor please, my question was confined exclusively to the situation at the Hedgeside Distillery. And it only deals with the particular whiskey and distilled spirits now stored at the Hedgeside warehouse and it's improper re-direct.

The Referee: I sustain the objection, but the Court [1130] is not going to decide on the answer that he gave prior.

Mr. La Shelle: I understand that.

Q. Well, have you got a group of 1598 or 1520 forms with you?

A. I turned over a set of each or a couple of sets of each to you this morning.

(Testimony of Earl Johnson.)

Mr. La Shelle: Oh, you did?

(Discussion off the record.)

Q. I think you testified with reference to the audits, that the government forms which you used in making those audits were the 1598's and the 1520's, is that right? A. That's correct.

Q. And those two printed forms that you just gave the Judge—1598 in three parts and 1520 in one part, one long form and one short form, are those the forms that you worked from?

A. Yes.

Q. In making the audits? A. Yes.

Mr. La Shelle: We offer those in evidence, your Honor, as an example of the forms so the Court may have some idea of what was worked from and also for the purpose of showing from the exhibits themselves that there is no provision on any of these government forms in question as to ownership of the spirits.

Mr. Walsh: Now, your Honor please, I am going to object to offering in evidence on behalf of the petitioner, those documents which are Form 1520 and 1598. [1131] Mr. La Shelle states that the purpose of introducing these documents in evidence is to show that none of these forms which were kept by the government gauger at Hedgeside Distillery contained any statements or entries showing the ownership of the distilled spirits or whiskey. Now, I submit the best evidence is the records kept by the government at Hedgeside.

Mr. La Shelle: I may have misled him with



(Testimony of Earl Johnson.)

what I said, although I didn't intend to. I meant to show that these two forms here do not show any ownership. And also to illustrate the forms that he worked from in making the audits.

Mr. Fisk: I have no objection—I make the same objection as Mr. Walsh, on behalf of the bank, but I have no objection to his offering these. The testimony of the witness said these are the printed forms that he examined as far as the printed form itself is concerned, but I don't think it is the proper way to show what was filled in on the forms or what was not filled in on the forms.

The Referee: 1520 has already been marked for identification as the Bank's No. 1.

Mr. Fisk: That's right.

The Referee: The 1598 form in three parts, will now be marked as Petitioner's No. 58 for Identification. Mr. Johnson or Mr. Fisk, do you recall whether the 1520 [1132] that is marked for identification now in the possession of Mr. Fisk, is the short form——

The Witness: It is the long form.

Mr. Fisk: It is the long form.

The Witness: Yes.

(Discussion off the record.)

The Referee: You may proceed, Mr. La Shelle.

Mr. La Shelle: With reference to Petitioner's Exhibit No. 15 for Identification, which is the 1598, we offer that in evidence, your Honor.

The Referee: Objection sustained.

Mr. La Shelle: Well, I'm not limiting it. The

(Testimony of Earl Johnson.)

purpose of it is to show what that government form is. Now, the witness has testified that he utilized that form in making the audits. The form speaks for itself. There is no question as to the authenticity of the form, I take it.

The Referee: Except that this is the blank form here.

Mr. La Shelle: Yes, but it is to show what provisions there are to make. And then for what it's worth, you can illustrate there, your Honor, that there is no provision on this form, at least for me, showing as to who owns the spirits.

The Referee: Well, in that respect, both you gentlemen, all three of you, are arguing the same way.

Mr. La Shelle: Yes, but there's nothing before the [1133] Court—nothing to show before the Court.

The Referee: I mean, you agree to that.

Mr. Walsh: Surely.

Mr. Fisk: My objection is this: My objection is simply that this form is not relevant evidence in this proceeding of anything except that it is a 1598 blank form of the government.

Mr. La Shelle: Perhaps I misunderstood.

Mr. Fisk: I don't think that's relevant.

Mr. La Shelle: Well, perhaps I misunderstood you gentlemen, but are you willing to stipulate that Form 1598 and 1520 has no provision for showing ownership of the goods as to who that was sold to?

Mr. Fisk: No, I don't see any occasion to—

Mr. La Shelle: That's just it. They agree to it

(Testimony of Earl Johnson.)

informally but when you ask for a stipulation they won't agree to it. I think that is perfectly competent to show one thing—that there is no provision in these forms for the showing of any ownership other than who produced them. They testified, oh, contents from those government records, who owns them, they testified from the barrels. No, then they'll argue later on, by implication we failed to do something to earmark these goods when there is no method of earmarking them.

The Referee: Mr. Walsh is in accord with a portion of your statement, Mr. La Shelle—the part that maintains [1134] there is no ownership bracket in this form.

Mr. La Shelle: Yes, but when you ask them to stipulate, they refuse to do so. Then we should be allowed to show that by the form.

The Referee: Well, you can have this witness testify and refer to these forms that have been marked for identification; you may do that.

Mr. La Shelle: I should think the best evidence would be the form, not the witness's testimony. All they do is read them and say it isn't there. We can do it that way.

Mr. Walsh: Mr. La Shelle, as the Court states, we are all in accord with the fact that from an examination of Form 1520 and Form 1598 now in the custody of the gauger at the Hedgeside Distillery, no one could tell the ownership of the distilled spirits and whiskey now on storage at the Hedgeside Distillery Warehouse. Now, to try to introduce in

(Testimony of Earl Johnson.)

evidence a blank form with the comment that you can read my mind and tell me what purpose I am going to use that form in the future, I submit is clearly incompetent.

Q. Well, Mr. Johnson, is there any provision on 1598 or 1520 in the way you used them in the audits in which you can determine ownership of the goods?

A. No.

Q. Is there any method that you know of from your experience of being in warehouses or making audits of any kind in which the [1135] barrels are earmarked as to who owns them?

Mr. Walsh: Just a minute, if your Honor please, I am going to object to that question on the grounds it is improper redirect, on the second ground it's incompetent, irrelevant and immaterial in this proceeding. I confined my cross-examination exclusively to what took place at the Hedgeside Distillery and what the present situation is at Hedgeside Distillery.

Mr. Fisk: I should like to make an objection it is irrelevant, incompetent and immaterial whether it is possible to follow a method to identify barrels.

The Referee: Sustained.

Q. Well, I might ask you this. To your knowledge, is it the custom or practice to earmark or mark barrels or spirits in bond in any manner so as to designate the owner?

Mr. Walsh: Now, just a minute, your Honor, I object to that, your Honor. It's improper redirect, it's incompetent, irrelevant and immaterial.

(Testimony of Earl Johnson.)

Mr. Fisk: No foundation laid for it.

The Referee: Sustained.

Mr. La Shelle: Your Honor, the witness has developed on cross-examination that there was nothing on the barrels.

The Referee: The witness didn't state that. The witness stated that there were serial numbers and other numbers on the barrels. His answer to Mr. Walsh's question [1136] was that there was nothing on the barrels that indicated that it belonged to Schenley or there was nothing on there which showed ownership to anyone. His answer to me was that there were serial numbers on there, is that correct?

The Witness: That's correct.

Q. Now, with reference to the other barrels that you saw up there that you testified to, was there any evidence on those barrels as to who owned them?

A. No.

Q. I think you stated that there was somewhat over 9,000 barrels there and somewhat under nine were Schenley's. A. That's correct.

Q. Now, when you went up there on the inventory, I think you told Mr. Walsh you couldn't tell from the government records or from the barrels what was Schenley's and what wasn't Schenley's.

A. That's right.

Q. Were there any other records from which you could tell which was Schenley's and which wasn't?

A. Only from the proprietorship records.

Q. And by "only from the proprietorship rec-

(Testimony of Earl Johnson.)

ords," you mean records as distinguished from the government records? A. That's correct.

Q. And what were those proprietorship records?

A. Warehouse receipts would be the record which I have particular reference to, the copies of the warehouse receipts maintained in the proprietor's books on the premises up there. [1137]

Q. You mean like these books that were in here.

A. That's correct.

Q. Warehouse receipt books.

Mr. Fisk: May I have the last question and answer read?

(The last four questions and answers were read by the Reporter.)

Q. By these books, I mean the warehouse receipt books that are marked in here. I think that's all, your Honor.

The Referee: Mr. Fisk?

#### Recross-Examination

Mr. Fisk: Q. In other words, your method of determining Schenley's claim of ownership was from an examination of the proprietary records at Hedge-side, is that your testimony?

Mr. La Shelle: Just a moment, I object to that. That is not proper cross-examination as to the basis for Schenley's claim.

Mr. Fisk: That's the only relevancy of his testimony.

Mr. La Shelle: That is the matter upon which the Judge is going to be called upon to decide here.

(Testimony of Earl Johnson.)

The Referee: Just before Mr. La Shelle finished, read the question that Mr. La Shelle asked the witness with reference to the proprietorship records and Mr. Fisk's question.

(The questions and answers referred to were read by the Reporter.) [1138]

The Referee: Overruled. You may answer.

A. Since before we went up there, Schenley's claim was from the copies of the original warehouse receipts which we had available to us for the approximately 9,000 barrels of merchandise stored up in IRBW No. 2 at Napa, California. However, in order to know who was supposed to be the owner of any of that merchandise at any time, whether it be Schenley or otherwise, the records are available in the proprietor's copies of the warehouse receipt books indicating who was supposed to have ownership of the merchandise stored up in IRBW No. 2.

Q. And your means of determining whom you thought had ownership to those barrels was from an examination of the warehouse receipt books of Hedgeside, is that correct?

A. That is correct.

Mr. La Shelle: That's all.

### Recross-Examination

Mr. Walsh: Q. In other words, Mr. Johnson, if a stranger went up to the premises of the Hedgeside Distillery to ascertain who owned the whiskey and distilled spirits stored in the Hedgeside warehouse,

(Testimony of Earl Johnson.)

he could only get that information from the proprietor's records, is that correct?

A. That's correct.

Mr. Fisk: Q. And in particular, the warehouse receipt books.

A. That's what we used was the warehouse receipt books in particular, but there were sales records and other records up there covering the purchase and sale of merchandise, copies of [1139] invoices and so forth which we had available.

Q. But you, in establishing Schenley's position, you looked at the warehouse receipt books, is that right?

A. We checked the warehouse receipt books to see that they were in conformity with the copies of the original warehouse receipts which we already had on hand.

Mr. Fisk: That's all.

Mr. Walsh: No further questions, your Honor.

The Referee: Mr. La Shelle.

Mr. La Shelle: Q. They were verified to show whether your records checked with theirs.

A. That's correct.

Mr. La Shelle: Miss Jones, please.

### ELOUISE JONES

called as a witness on behalf of the Petitioner, being first duly sworn by the Referee, testified as follows:

The Referee: Q. Your full name?

A. Elouise Jones.

Q. Elouise? A. Yes.



(Testimony of Elouise Jones.)

Q. E-l-o-i-s-e?           A. E-l-o-u-i-s-e.

Q. And where do you reside?

A. San Francisco.

Q. Street address?           A. 950 Bay.

The Referee: Very well, Mr. La Shelle.

Direct Examination

Mr. La Shelle: Q. Miss Jones, you are employed by Schenley's, are you not? [1140]

A. Yes, sir.

Q. And have been for quite some years?

A. Yes.

Q. How long?           A. Six years.

Q. And during the years 1947 and 1948, were you employed by Schenley's in San Francisco?

A. Yes, sir.

Q. And in what department were you employed?

A. In the cashier, contract and lease department.

Q. And in what capacity; did you have any particular title?

A. Well, I was assistant to the man that had supervision over those three departments.

Q. And during the—starting some time in the fall of 1947 and during the so-called winter of '47 and '8 and spring of '48, did you do anything in connection with the Franciscan and Hedgeside spirits contracts?           A. Yes.

Q. And will you just tell the Court what you did with reference to that contract and what your duties were?

A. I personally would pick up the invoices and warehouse receipts from the bank and—

(Testimony of Elouise Jones.)

Q. What bank?

A. The Anglo California Bank. We would put them through for payment and then I personally would take the money and the—take the money to the bank and pick up the warehouse receipt, the paid sight draft and the original invoice.

Q. Now, getting a little bit more specific, with reference to those functions that you described generally, I would like to [1141] have you take it out of the various steps, starting with the first step. What would be the first thing that you would do?

A. Some man (I don't know what his name was) from the Anglo California Bank would call me, and say that he had a specified number of warehouse receipts and invoices from Hedgeside there on sight draft that should be picked up for payment. I would immediately go to the bank and check the invoice against the typewritten part of the warehouse receipt.

Q. Now, explain to the Judge just what you mean by that.

A. The warehouse receipt is in a printed form and inserted or typewritten on the form were serial numbers, the OPG's, original proof gallons, and it showed the location of the warehouse and it was signed by someone at the warehouse stating that the gallonage was at the warehouse.

Q. Now, you say you check that against the invoice?           A. Yes.

Q. Did the bank give you an extra copy of the invoice?           A. They gave me a duplicate copy.

(Testimony of Elouise Jones.)

Q. And then you would, in effect, as I understand it, proofread the invoice against the typewritten portions.

A. That's right.

Q. Of the warehouse receipt.

A. The body of the warehouse receipt and the invoice were the same—should be the same.

Q. And then when you had done that and were satisfied that the two tallied, then what was your next step? [1142]

A. Well, also, I checked to see that it was approved by our representative at the Hedgeside. Then I brought the duplicate invoice—

Q. Do you recall the name of that representative?

A. Mr. Del Tredici. If his okay was on there, I would bring the duplicate invoice back to the office, make up a request for check and send that to the production department. When they had approved it for payment, then the voucher check was sent back to me or to my superior, Mr. Manheim, either one of us would proofread that again to see that the amount and extension and so forth were right. Then it would be signed by either one of us and I would take it back to the bank, pick up the original receipt or original invoice, rather, and the warehouse receipt and bring them back to the office where I kept them.

Q. And with reference to that transaction, when you picked up the original invoices and the warehouse receipt itself, were there drafts in connection with that?

(Testimony of Elouise Jones.)

A. Yes, both of the invoices and the sight draft were marked paid.

Q. And then you would bring those back to your office?      A. Yes.

Q. And with reference to the invoices during this period of time, were they all Hedgeside invoices or were there some other invoices?

A. Well, I couldn't say for sure. There were both of them. [1143] We had Franciscan and Hedgeside.

Q. Just how many there were of one or how many of the other——      A. I don't know.

Q. (Continuing): You do not know——

A. I didn't keep track of it or an account of them.

\* \* \* \* \* [1144]

### CHARLES W. EBNOTHER

called as a witness on behalf of the Petitioner, having been previously sworn, testified as follows:

The Referee: You have been sworn before, Mr. Ebnoter?

Mr. Walsh: Yes, he has been on the stand.

The Referee: Mr. La Shelle, do you have any progress to report with reference to the attempt to contact alleged sight drafts that may or may not be in the New York office?

Mr. La Shelle: I can report progress, by God! They have been found and they're mixed up with some other stuff. They were found in the production department. I think Miss Jones found them last

(Testimony of Charles W. Ebnother.)

night and I asked them to take the other stuff out that had nothing to do with it. Put them in order so that they would correspond to the schedule so that you could go down the line, but that hasn't been done. There's quite a few of them.

(Discussion off the record.)

The Referee: This is for the record. Mr. La Shelle, you were going to furnish the Court with exhibits 56 and 57 for Identification which are copies of transmittal letters to Hedgeside and Franciscan. [1178]

(Discussion off the record.)

The Referee: Petitioner's Exhibit 56 for Identification, transmittal letters to Hedgeside, and I am keeping the same date—March 27. Now, the Franciscan letters—

Mr. La Shelle: Now, Franciscan—Schenley to Franciscan, December 19, 1947; the next one is April 23 Schenley to Franciscan; the next is March 19, Schenley to Franciscan, '48; the next is February 18, '48, Schenley to Franciscan; the next is January 16, '48 to Franciscan.

The Referee: That's Petitioner's Exhibit 57 for Identification—March 27.

(Discussion off the record.)

Mr. La Shelle: I think it has already been developed for the record that Mr. Ebnother here is the duly appointed and acting trustee in this case. And may it please the Court, I had intended producing the minute book and I think also explained to the Court what happened this morning. What I

(Testimony of Charles W. Ebnother.)

wanted to develop from that minute book was that at Napa, where the Hedgeside warehouse is in question, was the principal place of business of the bankrupt corporation at the times in question in this case and that R. I. Stone was the president of the corporation at the time in question in this case.

Mr. Fisk: At the time of what?

Mr. La Shelle: At the time in question in this case. In other words, that would be roughly during the years of '48 and '49, and also that Mr. McMains, whose first name or initial slipped my memory—Do you recall him?

The Witness: W. S.—Warren S.

Mr. La Shelle: Warren S. McMains or W. S. McMains was an officer of the bankrupt corporation during that period, I think secretary, is that right?

The Witness: Possibly secretary-treasurer. He might have been secretary. Yes, he was secretary.

Mr. La Shelle: And also, that I think Mr. Logan—I don't remember his first name?

The Witness: David F., I believe.

Mr. La Shelle: And he was a vice-president or an officer, was he not?

The Witness: Yes, vice-president.

Mr. La Shelle: And those are the principal matters that I wish to establish in the minute book and that due to that little snag here that I mentioned to your Honor, it isn't here. May that be stipulated to, gentlemen?

Mr. Fisk: We will stipulate to it subject to check and I take it when you say that the principal

(Testimony of Charles W. Ebnother.)

place of business of Hedgeside was at Napa, you have reference [1180] to the fact that the articles show that to be the principal place of business—Napa.

Mr. La Shelle: And also, in the minutes would be evidence of a resolution establishing if they change it, don't you see?

Mr. Fisk: Well, I am perfectly willing to stipulate, subject to check, that the articles of association show Napa to be the principal place of business.

Mr. La Shelle: Well, of course, I don't know what the minute book shows. I have never seen it. There may be some resolution in there in question. I take it that at the next hearing at least, you can produce the minute book, couldn't you?

Mr. Fisk: Certainly; certainly. The only thing I was getting at, Mr. La Shelle, was this. That we aren't stipulating to any fact except that that's what the articles show.

Mr. La Shelle: Well, I mean——

Mr. Fisk: If you want to establish where they did business, it seems to me you don't do that through the articles; you do it through a witness and what they did.

Mr. La Shelle: Well, I am not asking for anything beyond the minute book and we can have it here tomorrow and in order not to bring Mr. Ebnother back if we can possibly avoid it, can we use the minute book by stipulation? [1181]

Mr. Fisk: Surely. Now, it is my recollection (it will have to be, of course, subject to check upon

(Testimony of Charles W. Ebnother.)

producing the book) that Mr. Stone, throughout the entire period from 1945 was president, David Logan was vice-president. I don't know about McMains except that I know that he signed such papers as secretary. Now, it's also my recollection that Mr. Axelrod was the secretary part of the period.

The Referee: There is some document here that indicates at some period Mr. Axelrod was assistant secretary, I believe. Was he?

Mr. Fisk: I am perfectly willing that you use the documents that the minutes show, whatever they show.

Mr. La Shelle: Yes, you can bring it in tomorrow.

Mr. Fisk: Yes.

The Referee: Mr. Walsh, isn't there some document with reference to the administration of the estate, not with reference to the petition of Schenley, that indicates that Axelrod held some title?

Mr. Walsh: Yes, that information is in evidence under 21(a) in the transcript.

The Referee: Well, in any event—I am sure that Axelrod held some title.

Mr. Fisk: Well, he signed some of these contracts.

The Referee: And he also, as I recall it, signed some of these bankruptcy documents when I instructed the [1182] trustee, Mr. Ebnother, to assist the Court in preparation of his schedules.

Mr. Walsh: They signed minutes, prepared the—

The Referee: Statement of affairs.



(Testimony of Charles W. Ebnother.)

Mr. Walsh: (Continuing): statement of affairs, your Honor. I think you will find those are signed by Axelrod.

The Referee: Stone signed those.

Mr. La Shelle: Stone signed those.

Mr. Walsh: Did he?

The Referee: As president. Here is what this document says. This doesn't have to be in now.

(Discussion off the record.)

The Referee: But in any event, you will have the minute book, Mr. Walsh or Mr. Fisk, available?

Mr. Walsh: Yes, your Honor.

The Referee: All right, Mr. La Shelle.

Mr. La Shelle: Well, I think for the time being, we can pass on to another matter, your Honor.

#### Direct Examination

Mr. La Shelle: Q. Mr. Ebnother, I'll show you here one, two, three, four, five, six, seven warehouse receipt books purporting to have fifty receipts to a book, beginning with number 3351 down to and including 3700. These purport to be the copies of warehouse receipts of Hedgeside Distilleries. You have seen these books before, have you not?

A. Yes, sir. [1183]

Q. And where did you get these books?

Mr. Fisk: Just a minute, do they purport to be of the Hedgeside Distillery or Internal Revenue Bonded Warehouse No. 2?

Mr. La Shelle: Well, I mean, they have that item described in great detail—Hedgeside Distillery, In-

(Testimony of Charles W. Ebnother.)

ternational Revenue Bonded Warehouse No. 2. It says "received in our Internal Revenue Bonded Warehouse No. 2 to the account of, subject to your," etc. I didn't go through the whole rigamarole in describing it. I think the question was: Where did you get these seven warehouse receipt books I just mentioned? A. Out of the vault at Hedgeside.

Q. And by "Hedgeside," you mean the Hedgeside—

A. Hedgeside Distillery Corporation.

Q. The company's plant at Napa, California?

A. Yes, sir.

Q. And when was it that you got those? That was following your appointment as trustee in this case, was it not? A. Early part of June.

Q. And shortly after you were appointed.

A. Yes, sir.

Q. And by the vault that you state, could you just tell us where that vault is located with reference to the office and the warehouse?

A. Well, it's adjacent, you might say, or a part of the [1184] office.

Q. In other words, it's—

A. In one corner of the room it was or off of the main used as an office.

Q. And with respect to the office, where is that located with reference to the warehouse?

A. Well, there are three large, basaltite rock buildings—Warehouse A, B and I believe, C. I've forgotten the number of the third one but it's the third building in from the gate.

(Testimony of Charles W. Ebnother.)

Q. In other words, Warehouse No. 2 is three different buildings, is that right

A. No, Warehouse No. 2 — Internal Bonded Warehouse No. 2 is two buildings.

Q. Is two buildings. A. Yes.

Q. And the office is in which one of those buildings? A. Neither.

Q. Which building is it in?

A. It's in a third building which also houses the vault.

Q. And where is that with reference to A and B?

A. Well, they're all in a row, ranging from the gate back as you drive in. The first two are warehouse buildings and the third one is the one in which the office is located.

Q. And there has been no change, to your knowledge, has there, in the contents of these books from the time that you picked them up?

A. No material change, no. [1185]

Mr. Walsh: Now, wait a minute. Did you understand his question, Mr. Ebnother?

The Referee: Will you read the question and Mr. Ebnother's answer?

(The last question and answer were read by the Reporter.)

Mr. Walsh: You don't mean "no material——". What do you mean by "material change"?

The Witness: What I have reference to is this: I believe that there were one or two copies which were picked out of the files and put in those books.

(Testimony of Charles W. Ebnother.)

They were in there the first day that we checked. That's what I had reference to.

(Discussion off the record.)

Q. Just to clear up that point, when you first got the books, you found some copies of something missing?

A. I believe there were a few—one or two copies that we found later in the files.

Q. And you put those in the books.

A. That's right.

Q. Where did you find the copies?

A. In the Hedgeside files.

Mr. La Shelle: Your Honor, these seven books have not yet even been marked, have they?

The Witness: They haven't.

Mr. La Shelle: These seven books, warehouse receipts that are now marked for identification as to [1186] their numbers, are covered by these seven books. We have checked that and therefore, offer these warehouse receipt books in evidence at this time as Petitioner's Exhibit next in order.

The Referee: Just a minute, Mr. La Shelle. Do I understand now that you are testifying or making a statement with reference to the exhibits—the photostatic copies——

Mr. La Shelle: Well, I am not testifying; I mean, it's a matter of check. I have checked and I mean, I am perfectly willing to let counsel check if they want to. Do you want to check those numbers from the statement——

(Testimony of Charles W. Ebnother.)

Mr. Walsh: Your Honor please, I am going to object to the introduction in evidence of these seven books at the present time for the following reasons: If you recall, at the prior hearings, an objection was sustained to the introduction in evidence of the original warehouse receipts until they were properly identified. Now, I submit that the same objection applies to these books which contain the carbon copies of these warehouse receipts. Mr. La Shelle is trying to get in evidence indirectly documents which he couldn't do directly.

Mr. Fisk: And I object to it on the ground that there is no proper foundation laid, it is irrelevant, [1187] incompetent and immaterial; until the original warehouse receipts that Schenley has claimed that there are are offered and received in evidence in this proceeding, these books have obviously no materiality whatsoever.

Mr. La Shelle: My purpose here is simply this, your Honor. The objection to the original warehouse receipts which were marked for identification, that naturally needed further qualification, which I will give in due course if I can't do it at the present time. Now, the introduction in evidence of these books standing alone, are not going to introduce in evidence the original warehouse receipts. That's obvious. But it's part of a chain of evidence going toward the establishment in due course of the original warehouse receipts and I

(Testimony of Charles W. Ebnother.)

think from that basis as part of a foundation, they are admissible for that purpose.

Mr. Fisk: You have the cart before the horse.

The Referee: You gentlemen agree with me, merely for the sake of numbers, that the last number we had was 57.

Mr. Walsh: Right.

The Referee: I mean, even though those two substituted documents came in today as 56 and 57 at the last hearing, did I receive anything later than a 57?

Mr. Walsh: I understand you did not.

Mr. La Shelle: Not to my knowledge. [1188]

The Referee: The seven warehouse receipt books will all be identified as Petitioner's Exhibit No. 58 as one exhibit. When the warehouse receipts are identified and are in evidence through the witness that you are still going to supply, then the Court will entertain your motion to introduce these seven books in evidence without the necessity of any further examination from Mr. Ebnother.

Mr. La Shelle: Have you fellows got a note of these numbers?

Mr. Fisk: No, we haven't. But before you pass on that, my notes here show, your Honor, that Petitioner's for Identification was government form 1598.

The Referee: That's what I was afraid of. I mean, I can check here but I think you are right, Mr. Fisk.

(Testimony of Charles W. Ebnother.)

Mr. La Shelle: That's right. So this will be 59.

The Referee: So this will be 59. Now, you can go ahead, Mr. La Shelle, and identify the books.

Mr. La Shelle: Yes, for the purpose of notation of respective counsel, there are seven books of non-negotiable and they start with 3351 and run down to and including 3700.

The Referee: Are they inclusive for the fifties right through?

Mr. La Shelle: Right through.

The Referee: There's no break between—— [1189]

Mr. La Shelle: Well, let me check again—3351 to 3400; 3401 to 3450; 3451 to 3500——

Mr. Fisk: It would have to go to 3800 to make seven.

Mr. La Shelle: 3501 to 3550; 3551 to 3600; 3601 to 3650; 3651 to 3700.

The Referee: Petitioner's No. 59 for Identification. The seven books will be one exhibit.

(Discussion off the record.)

Q. Mr. Ebnother, I show you here, Petitioner's Exhibits No. 46 and 47 for Identification which consists, in substance, of a general description of Form 27-d of the Treasury Department covering Internal Revenue Bonded Warehouse No. 2 at Napa, California. Now, these are photostats which have been substituted for the originals. You will recall, I think, sometime ago that at our request, you produced those two Petitioner's Exhibits No. 46 and 47?

(Testimony of Charles W. Ebnother.)

(Discussion off the record.)

A. Were these photostated at Napa or here?

Q. I don't know. All I know is that the originals were produced here and were turned over to Mr. Walsh in the courtroom for the purpose of getting them photostated. Now, who did that physically, I don't know.

A. I don't either.

(Discussion off the record.)

The Witness: What is your question on this again?

(The Reporter read as follows: "Question: Mr. Ebnother, [1190] I show you here, Petitioner's Exhibits No. 46 and 47 for Identification which consists, in substance, of a general description of Form 27-D of the Treasury Department covering Internal Revenue Bonded Warehouse No. 2 at Napa, California. Now, these are photostats which have been substituted for the originals. You will recall, I think, sometime ago that at our request, you produced those two Petitioner's Exhibits No. 46 and 47?")

A. I don't remember the numbers. I produced petitioner's exhibits, but I don't remember what the numbers were.

Q. Well, I mean, you produced these documents. You remember we were questioning you to bring the ATU forms and correspondence with reference to the warehouses?

A. I did.

Q. And those are what you brought in and were later photostated, is that correct?



(Testimony of Charles W. Ebnother.)

A. Well, I assume it is but I have to depend upon——

Mr. La Shelle: Well, I might state, your Honor, that the purpose of this is to offer proof that the warehouse in question up here is an Internal Revenue Bonded Warehouse. We have Mr. Walsh's stipulation to that effect which he gave just before the trial started but Mr. Fisk did not agree to the stipulation so the proof, as far as Mr. Fisk is concerned, has to go in. Mr. Walsh stipulated before the trial that—— [1191]

Mr. Walsh: How could I stipulate before the trial and it would not be in evidence? If it was before the trial, where would I stipulate?

Mr. La Shelle: I mean, I phoned you and asked you if you would stipulate and you said you would but Mr. Fisk said he wouldn't, isn't that correct?

Mr. Fisk: That never was put up to me, if I remember correctly.

Mr. La Shelle: It definitely was. You agreed to stipulate to it if I stipulated it had no legal significance in the case.

Mr. Fisk: Was that in this proceeding?

Mr. La Shelle: No, on the phone before the trial started, I asked you for that stipulation.

Mr. Fisk: Oh, before the trial started!

Mr. La Shelle: And Mr. Walsh said he would stipulate; there was no question in his mind. You said you would stipulate if I would stipulate it had no legal significance in the case, which I refused to do.

(Testimony of Charles W. Ebnother.)

Mr. Fisk: I just don't remember that when you say that.

The Referee: Well, regardless of the background, what is the situation now?

Mr. La Shelle: Well, these were produced by Mr. Ebnother, no one else, and they were taken in here for photostating. The originals, according to Mr. Walsh, [1192] were given back to Mr. Ebnother. In reviewing these photostats, apparently some confusion is in his mind on account of it being photostated as to whether they're what he produced.

Mr. Walsh: Well, Mr. La Shelle, if you will examine these documents, you will find that these were marked by the Court as Petitioner's 46 for Identification and 47 for Identification. Now, I recall exactly what happened. The originals were introduced in evidence—for identification as Petitioner's 46 and 47; then the originals were given to me to have photostated, which I did. Then the photostats were introduced in evidence for identification only——

Mr. La Shelle: Wait a minute, were they introduced in evidence?

Mr. Walsh: I mean, for identification. They were in for identification only. And the originals were turned over to Mr. Ebnother. No doubt he took them back to the distillery.

Mr. La Shelle: Yes, but that's quite correct. But in having them marked for identification, as dis-

(Testimony of Charles W. Ebnother.)

tinguished from going into evidence, no testimony at that time was given by Mr. Ebnother concerning them whatsoever.

Mr. Walsh: No.

Mr. La Shelle: Isn't that right? That's what I'm [1193] trying to develop.

Q. Now, as to whether or not Petitioner's Exhibits, photostatic copies now 46 and 47 for Schenley's, is that what you produced that time and what we had? I mean, if necessary, we'll have to get the originals again.

A. Well, it's my opinion that it is.

Q. All right. And where did you get those?

A. Out of the files of the Hedgeside Distillery Corporation.

Q. And that was after your appointment as trustee, I take it.

A. It was.

Q. And approximately when was that, do you recall? I mean, what month?

A. No, I do not. This must have been——

Q. During the course of the trial, wasn't it?

A. During the course of this trial, yes.

Q. And you got those from the office up there, did you?

A. I did.

Mr. La Shelle: These Petitioner's Exhibits No. 46 and 47 for Identification, your Honor, we offer in evidence as the same numbers.

Mr. Walsh: Your Honor please, I am going to object to the introduction in evidence of these documents at the present time. They haven't been properly identified. The fact that they're in the files of

(Testimony of Charles W. Ebnother.)

the Hedgeside Distillery has no particular significance. [1194]

Mr. La Shelle: If I may point out to your Honor here—we'll take the latest one. This is simply by way of clarification.

Mr. Walsh: Which one—

Mr. La Shelle: I am taking the top one, the latest one, 47; it's underneath the certificate of ownership. It has the big printed letters "Application by Proprietor of Internal Revenue Bonded Warehouse" and under the rules and regulations of the ATU in getting proprietorship to qualify as a bonded warehouse, the Internal Revenue file this form 27-d and it's filed in triplicate, together with the usual bond and surety and then when it's approved, first the approval is recommended by the district supervisor (that's the local man) and in turn it goes back to Washington and it's eventually approved by the deputy commissioner, if it's approved at all, and then the copy—one copy of the approval is sent back to the proprietor and that constitutes his qualification as a bonded warehouse. They do not issue a permit or license as the state does for this particular type of operation.

Mr. Walsh: Your Honor please, I am going to withdraw my objection. I have examined the documents here and it shows this is a certified copy by the government.

The Referee: 46 and 47 for Identification now become 46 and 47 in evidence. [1195]

Mr. Fisk: I'm a little late, but I would like to

(Testimony of Charles W. Ebnother.)

move to strike it out on the grounds, for the purposes of the record, it's irrelevant, incompetent and immaterial.

The Referee: Objection overruled.

Q. Now, with reference to state licenses, I believe I am correct in stating that either Mr. Ward or I asked you to make a search for state licenses up there? A. That's right.

Q. And you were not able to find any, were you?

A. That's right.

Q. Had they been taken up when the corporation went bankrupt, to your knowledge?

A. I don't know.

Q. When the corporation went bankrupt, as I recall it, the Internal Revenue Department of the ATU called up and for brevity's sake, closed the place until you qualified on your surety, isn't that right? A. That's correct.

Q. But the surety has now consented to the substitution. A. That's right.

Q. That's for the purpose of the bonded warehouse. A. That's right.

Q. Now, Mr. Ebnother, with respect to Mr. R. I. Stone, are you familiar with his signature?

A. I believe I am, yes.

Q. And with reference to Mr. McMains, are you familiar with his signature?

A. Yes. [1196]

The Referee: Do you gentlemen want a recess this morning?

(Discussion off the record.)

(Testimony of Charles W. Ebnother.)

Mr. La Shelle: I have the originals here of Petitioner's Exhibit No. 43 in evidence. These are the originals for which substitutes have been——

Mr. Walsh: You mean, in evidence?

Mr. La Shelle: Yes, they're in evidence—no, they're for identification—my mistake. They begin with 3511 and the last one is 3545. They're not inclusive. That constitutes Petitioner's Exhibits No. 43 for Identification.

The Referee: Well, so there will be no misunderstanding, I think that a portion of 43 is in evidence, exclusive of the warehouse receipts.

Mr. Fisk: That's correct.

The Referee: And exclusive of some other——

Mr. La Shelle: Yes, that's right.

The Referee: (Continuing) memoranda that were stipulated would not be.

Mr. La Shelle: The invoices and cancelled checks are in evidence.

Q. Returning to the first certificate in this group, Mr. Ebnother, which is numbered 3511-B and purports to be signed by a Mr. McMains and a Mr. Stone, would you examine those signatures please? Are those the signatures of Mr. McMains [1197] and Mr. Stone?

Mr. Fisk: Just a minute.

Mr. Walsh: Just a minute, before you answer.

The Referee: Mr. Fisk or Mr. Walsh.

Mr. Fisk: Your Honor, I would like to examine this witness on a voir dire if he is going to testify to identify certain documents.

(Testimony of Charles W. Ebnother.)

The Referee: Very well.

Mr. La Shelle: No objections. Do you want to take a short recess or go over?

Mr. Fisk: Let's finish this part.

The Referee: We will finish this matter and go on——

### Voir Dire Examination

By Mr. Fisk: Q. Mr. Ebnother, how long have you known Mr. McMains?

A. Since June, 1949.

Q. Since June, 19 what? A. '49.

Q. 1949? When did you first see him?

A. I don't remember the exact date but it was after I was named as the receiver at Hedgeside.

Q. And where did you first see him?

A. At Hedgeside Distillery.

Q. At Napa? A. At Napa.

Q. And since that first occasion, how many times have you seen him since then?

A. Oh, I would say about three or four.

Q. And on each instance at Hedgeside?

A. Yes. [1198]

Q. Have you ever received any correspondence from him?

A. I may have received a short note or so from him; I'm not positive as to that.

Q. Have you ever seen him sign his signature to any document?

A. I can't say that I have positively.

Q. Have you ever written any letters to him and received a reply from him?

(Testimony of Charles W. Ebnother.)

A. I am not sure, Mr. Fisk, because I think our business was transacted over the telephone, what business we did transact.

Mr. Fisk: Your Honor, I am going to object to examining this witness along the lines counsel has commenced on the grounds that there is no foundation laid to establish or identify the signature of McMains. Here, the witness has said he has only known him for a short period of time, he never received any correspondence from him or ever saw him sign his signature that he recalls, and he didn't even know him at the time that these documents were presumably executed.

Mr. La Shelle: Your Honor, before that matter is submitted, may I ask if you wish to ask this witness anything on voir dire as to Mr. Stone's signature?

Mr. Walsh: That's not before us.

Mr. Fisk: We will come to that when we get there. You haven't asked him about Stone's signature, have you? [1199]

Mr. Walsh: Oh, yes, he has.

Mr. Fisk: Has he?

Q. Well, I'll ask you the same thing with respect to Mr. Stone. How long have you known Mr. R. I Stone? A. Since June, 1949.

Q. Where did you first meet him?

A. In San Francisco, in the—I believe it was in the office of Mr. Ehrlich.

Q. And how many times have you seen Mr. Stone since you first met him?



(Testimony of Charles W. Ebnother.)

A. Numerous times.

Q. Numerous times?           A. Yes.

Q. Have you ever had any correspondence with him?  
A. I have received letters from him.

Q. Didn't you ever write him any letters?

A. I do not remember that I did.

Q. You don't recall ever writing him a letter?

A. No.

Q. And I take it that it is also your testimony that you never received any letters from him in response to any inquiry on your part, is that right?

A. I have received one letter from him which I have now.

Q. And was it in response to an inquiry you made of him?

A. No, not directly. Indirectly, in a way it was.

Q. You didn't see him sign the letter you had in mind.           A. No.

Q. You don't know whether he signed or not.

A. Well, the only assumption I can make is that he did sign it.

Q. Did you ever see him sign his signature?

A. Yes.

Q. Where?           A. At Hedgeside Distillery.

Q. And when?

A. I can't recall the exact date. I've seen him sign letters there in his own capacity that he was sending out.

Q. How often?

A. Oh, I would say perhaps a dozen or so at sometime or another.

(Testimony of Charles W. Ebnother.)

Mr. Fisk: That's all.

By the Referee: Q. Do you feel as though you could identify Mr. Stone's signature?

A. With reasonable accuracy, yes.

By Mr. Fisk: Q. You never saw him sign his name or receive any letters from him in response to any inquiries of your own prior to June, 1949.

A. No.

The Referee: Do you have anything, Mr. Walsh, on this objection?

Mr. Walsh: I have on the objections put in on the voir dire.

Mr. La Shelle: Before your Honor rules, may I ask him one or two questions, your Honor?

The Referee: Surely. [1201]

By Mr. La Shelle: Q. Mr. Ebnother, under my prior examination before Mr. Fisk examined you, when I asked you if you were familiar with Mr. McMains' signature and Mr. Stone's you said you were. With reference to Mr. McMains' signature only, will you just explain to the Court upon what basis you stated that you were familiar with his signature? In other words, what do you base that statement on? What have you observed with reference to his signature and where and when?

A. Well, I've seen many signatures of W. S. McMains in the records of Hedgeside Distillery. I have talked to Mr. McMains in regard to these warehouse receipts and I don't know this particular bunch, but in regard to the—warehouse receipts and Mr. McMains never at any time said that the

(Testimony of Charles W. Ebnother.)

signatures involved in those warehouse receipts were not his.

Mr. Walsh: Now, just a minute, your Honor please, I am going to ask that go out.

Mr. Fisk: Go out as hearsay.

The Referee: So ordered.

Q. Not with reference to what Mr. McMains may have told you because that's hearsay. You stated you saw his signature on various things. What did you see his signature on up there in addition to warehouse receipts, if you saw his signature on anything other than a warehouse receipt?

Mr. Walsh: Now, if your Honor—Just a minute, I am going to object to that question as incompetent, [1202] irrelevant and immaterial. We are entitled to have the witness be shown the particular documents which he said that he recognized his signature.

The Referee: He may answer. Overruled.

A. Well, that's rather hard to answer specifically, but there were letters in the files there that—memorandums and things of that kind that McMains had signed in the course of his work.

The Referee: Pardon me, Mr. La Shelle.

By the Referee: Q. Mr. Ebnother, supposing I told you that Mr. Stone had signed Mr. McMains' name to some of these warehouse receipts, could you tell me that he didn't, that it was McMains that signed them?

A. Well, no, that's a matter for a handwriting expert, your Honor.

(Testimony of Charles W. Ebnother.)

Q. Did you ever see McMains sign his name?

A. I'm not positive whether I have or not. I've seen him do clerical work there in the office and I'm not positive whether I have ever seen him sign or whether I haven't.

Mr. La Shelle: If it please the Court, any objection here I submit goes to the weight and not the admissibility of this evidence and I might review certain things in this case in connection with that. We have here in evidence and not for identification, but in evidence, contracts between petitioner and [1203] Hedgeside and Franciscan calling for the production of certain spirits. I won't go into details of those. You know generally, what those were. We have in evidence invoices covering the spirits. Those invoices set forth the serial numbers of the barrels, the number of barrels, the dates. We have checks of Schenley in evidence covering those. The warehouse receipts in question tally with those invoices not only as to the number of barrels but as to the serial numbers in question, so we have a chain there of evidence showing the contract to purchase in good faith, payments made by actual cancelled checks in evidence covering the invoices, the invoices tally in all respects with serial numbers and number of barrels with these various warehouse receipts in question, so that we have a substantial trustworthiness, you might say, that these were issued along with those invoices. We have this man here who is the trustee in bankruptcy, who I am sure the Court has faith and in-

(Testimony of Charles W. Ebnother.)

tegrity in, and I know that I have. He states that he is familiar with those signatures. Under those circumstances, I submit that any objection goes to the weight and not admissibility, and I might state this, your Honor. I state this for the record. That Schenley, as the petitioner in this case, does not stand in the shoes of the bankrupt. We're not to be clothed with whatever [1204] nefarious things were done by the bankrupt or its officers and we're not to be put in the position of being accused of not putting on the proper witnesses because we don't produce men in whom we have very little faith ourselves.

The Referee: Well, Mr. La Shelle, my answer to that is that no one, including the Court, is putting Schenley's in the same position as the bankrupt or any of the officers of the bankrupt. However, I do think that you made a misstatement, namely, the witness here has testified that he never, to his knowledge, can recall seeing Mr. McMains sign his signature. He said that he may have seen him write or make a memorandum or something to that effect. Now, knowing that Mr. McMains, as far as I am concerned, is still available and knowing that Mr. R. I. Stone has seen Mr. McMains sign his signature and knowing that he is available, I am going to sustain the objection as far as Mr. McMains' signature is concerned with Mr. Ebnother's proof.

Mr. La Shelle: Well, I mean, as far as that's concerned, I'll tell the Court right now and oppos-

(Testimony of Charles W. Ebnother.)

ing counsel, that I will go to great lengths in this case to avoid putting Mr. Stone on the witness stand. I want no part of him.

The Referee: Very well, but Mr. McMains is the [1205] man that we're trying to identify his signature and until the Court can be shown that Mr. McMains is not available or that his deposition cannot be taken, I'm not going to permit his signature to be proven through Mr. Ebnother.

Mr. La Shelle: I have other witnesses that can qualify Mr. McMains' signature as well as himself, your Honor.

The Referee: Well, that's the only matter that is before us at the moment.

Mr. La Shelle: Can we recess for a moment?

The Referee: Mr. Walsh wants to comment.

Mr. Walsh: You surprise me by the statement you made that you are going to accept the testimony as to Mr. Stone's signature. I submit, your Honor——

The Referee: No, I didn't say that. I said Mr. Stone certainly knows Mr. McMains' signature. Certainly, Mr. Stone would be a better man to testify as to Mr. McMains' signature. I didn't say anything about Mr. Stone's signature.

Mr. Walsh: I want to be sure now——

The Referee: That matter is not before the Court.

Mr. La Shelle: May I ask this, your Honor? As I understand it——

(Testimony of Charles W. Ebnother.)

The Referee: Now, just a minute now. Let Mr. Walsh finish. [1206]

Mr. Walsh: Your Honor well knows that we are entitled to examine the witnesses whose signatures are placed upon those documents when they certify their signature to those documents. We're entitled to examine the witness to find out when these documents were signed, were they signed before the warehouse receipts were issued to the bank. Your Honor knows, there are duplicate warehouse receipts in this proceeding.

The Referee: Mr. Walsh, you are just anticipating. You haven't lost anything. The only matter that was before the Court was the objection made by the trustee in bankruptcy and by the Anglo Bank to the identification of McMains' signature by Mr. Ebnother. There was an objection. Now, that's the only matter that the Court has been asked to rule on and that's the only matter that I would rule on.

Mr. Walsh: For the record, I want to make this statement. Mr. La Shelle is very careful to tell the Court that we did not subpoena Mr. McMains to testify as a witness. He has told us at least three times that he would have Mr. McMains in here as a witness to testify to certain matters in this proceeding. Now, he comes in today with a letter, stating he can't get Mr. McMains. That isn't by virtue of serving a subpoena on him.

The Referee: No, he didn't. Now, let's be fair. What [1207] Mr. La Shelle did do, he read a letter that he had received with reference to the avail-

(Testimony of Charles W. Ebnother.)

ability of Mr. McMains and I think that's as far as it went. He read the letter.

Mr. La Shelle: I'll state right now that I never have had Mr. Stone under subpoena and I don't think I've had one witness out of a hundred under subpoena in my whole professional career.

The Referee: Well, we're talking about Mr. McMains.

Mr. Ward: If I might say in connection with Mr. McMains, I have been in constant correspondence with him on changing trial times when we think we will be able to get to him next time and I have to call him up and I say: "Mr. McMains, you will have to put it over." At least three times, I have had him lined up to come down on a definite date and made hotel reservations, without the necessity of a subpoena, Mr. Walsh, and finally yesterday, I received that letter from him that he could not be here. At the present time, that's the status of it.

Mr. La Shelle: In reading that letter which I did off the record, I am just as well aware as the Court and everyone else that legally that letter doesn't carry any weight at all.

The Referee: We'll have a recess. Go ahead, Mr. Fisk. [1208]

Mr. Fisk: In response to Mr. La Shelle's statement that under no circumstances he would call Mr. Stone, of course, that is his affair, but it is also his statement that he has no faith in any of these men, it seems to me is most unusual when he is predicating the whole basis of his case upon dealings



(Testimony of Charles W. Ebnother.)

with these men; whether they are honest or dishonest, he has got to prove his dealings with these men. I don't think that that is any reason, a logical reason, for refusing to produce somebody. Now, he doesn't have to produce anybody.

Mr. La Shelle: Just a moment, that is a matter of argument and is not quoting me correctly at all. I don't think the bank is any crazier about Mr. Stone than Schenley is in this case.

The Referee: The trustee is in the best spot then.

(Laughter.)

Mr. La Shelle: I don't think that Bill White of the bank is exactly enamoured with Mr. Stone and I don't think you are either. And I will put on whom I please without any help from the opposition. If I have to use someone, all right, I can use him reluctantly.

Mr. Fisk: Well, I see your reason for proving a man's signature with an announcement that you don't have any trust in him when you get him.

Mr. La Shelle: I'll be perfectly content with that. [1209]

The Referee: Very well, gentlemen, we'll have a recess first.

Mr. La Shelle: It might also be pointed out that you can subpoena Mr. Stone as an adverse witness and cross-examine him to your heart's content.

Mr. Walsh: You try your case your way and we'll try ours our way. (Laughter)

(A brief recess was taken.)

(Testimony of Charles W. Ebnother.)

Mr. La Shelle: In this group, which is Petitioner's No. 43—no, 49 for Identification, I think I previously referred to it as 43, didn't I?

Mr. Ward: 43, you said before.

Mr. La Shelle: Well, it is 49—49, beginning with 3511 and ending with 3407, during the recess, Mr. Ebnother, you went through those warehouse receipts and on 3511, 3678 (will you check these with me) 338, and 3383 and 3403 and 3525—

The Referee: Just a minute—3525, that's not a part of that same exhibit, is it?

Mr. La Shelle: Oh, that's where I made my mistake, your Honor. I had two groups of exhibits together—43 was on the bottom. Strike 3525; on that group of Petitioner's Exhibit No. 49 for Identification, warehouse receipts I just read to you, with the exception of 3525, purport to bear the signature of R. I. Stone, is that correct? [1210]

The Referee: Mr. La Shelle, just a minute. For clarification, according to the Court's record, the lowest number of warehouse receipts in Petitioner's 49 is warehouse receipt 3381.

Mr. La Shelle: That's right.

The Referee: And the highest one is 3407.

Mr. Fisk: That's in the first group.

Mr. La Shelle: That's right.

The Referee: Do you agree?

Mr. La Shelle: That's right.

The Referee: Now, ask the question.

Q. Those numbers I read off to you purported

(Testimony of Charles W. Ebnother.)

to bear the signature of R. I. Stone, is that correct?

A. Yes.

Mr. Fisk: Wait a minute, the numbers purport to—

Mr. La Shelle: No, those warehouse receipts having that number purport to bear the signature of R. I. Stone and he said yes, is that correct?

The Witness: Yes.

Q. Now, from your familiarity with Mr. Stone's signature, would you say that that is his signature?

Mr. Walsh: Just a minute, if your Honor please, I am going to object to that question as incompetent, irrelevant and immaterial and not the proper foundation laid.

Mr. La Shelle: I'll submit the objection. [1211]

The Referee: Just a minute, so we will have no misunderstanding. According to the Court's exhibits for identification in 49, the name R. I. Stone is on 3381, 3383, 3403 and that's all. What other one did you have?

Mr. La Shelle: I had 3678 and 3511.

The Witness: Here is 3511.

Mr. La Shelle: 3678—I'll have to look at the schedule; they may have gotten mixed up. These are the originals and they're supposed to be in the same condition as the ones that are in evidence, your Honor.

The Referee: I've got all of them here. Which one are you talking about now—36 what?

Mr. La Shelle: According to my records of my copy of Petitioner's Exhibit 34 for Identification,

(Testimony of Charles W. Ebnother.)

which is the schedule, the first group which Fred has at times referred to as the first group in the schedule starts with 3381-B and the highest is 3407, so that there is in this group some that don't belong here; they've gotten mixed up.

Mr. Ward: Those go into Petitioner's Exhibit No. 50 and 51. 3687, for example, is in 51; 3511 is in Petitioner's No. 50.

Mr. La Shelle: Well, then, I'll limit to Petitioner's Exhibit 49 for Identification, having checked with the Court, only 3381, 3383 and 3403 purport to bear Stone's [1212] signature in that group. Is that right, your Honor?

The Referee: Those are the three warehouse receipts the Court has.

Mr. Ward: There is one other according to my record that should be there—the last one, 3407, which I think the Court said was the highest number.

The Referee: Yes, but it doesn't have Stone's signature.

Q. Referring to those warehouse receipts alone, 3381, 3383 and 3403 which you have examined here recently, would you state that that is Mr. Stone's signature?

Mr. Walsh: Now, just a minute, if your Honor please, I object to that as incompetent, irrelevant and immaterial, not the proper foundation laid and I might state for the record, my argument on the statement that the proper foundation has not been

(Testimony of Charles W. Ebnother.)

laid is that there is no evidence in this record that Mr. Stone cannot be produced.

Mr. Fisk: I make the same objection, that the witness testified himself that he is not a handwriting expert or qualified to pass on signatures with regard to Stone. He has testified that he has seen his signature but that doesn't qualify him to identify signatures—handwriting signatures.

The Referee: Do you think you know Mr. Stone's signature, Mr. Ebnother? [1213]

The Witness: I believe I do.

Mr. Walsh: If your Honor please, that is not the question, whether he knows the signature or not. That is secondary evidence. The fact that Mr. Ebnother will testify that he knows his signature. Now, if there was evidence in the record to show that Mr. Stone could not be produced to identify his own signature, the secondary evidence could be accepted to identify his signature and prove that that's his signature and it goes beyond that. We're entitled to examine Mr. Stone as to the circumstances surrounding the signing of that signature.

The Referee: Which goes to the weight of the evidence.

Mr. Walsh: It doesn't go to the weight. It goes to the admissibility, if your Honor please. I'd like to submit a brief on that.

The Referee: Mr. Ebnother informs the Court and also in his examination that he has seen Mr. Stone sign his name on numerous occasions and he

(Testimony of Charles W. Ebnother.)

has told me now that he thinks he can identify Mr. Stone's signature.

Mr. Walsh: He doesn't testify that that is Mr. Stone's signature. If he testified he knows positively that is Mr. Stone's signature, that would be well and good, but he hasn't testified to that.

The Referee: Is it Mr. Stone's signature, Mr. Ebnother? [1214]

The Witness: Well, to the best of my belief, it is.

Mr. Walsh: I know, but that isn't sufficient. In other words, you have Mr. Stone available to come in and testify that he did sign that document. It's no different than any other document that you are attempting to introduce in evidence.

Mr. La Shelle: May I just ask——

Mr. Walsh: Wait a minute. Just a minute, Mr. La Shelle. In other words, to have secondary evidence as to the signature on a document regardless of what the document is, you have to produce evidence to show that the man that signed that particular document is not available and cannot testify.

Mr. La Shelle: May I ask this? Are either you or Mr. Fisk going to contend or introduce any evidence that this is not Mr. Stone's signature?

Mr. Walsh: We'll try our case the way we think. You are trying your case now.

Mr. La Shelle: We have made the objection, your Honor.

The Referee: Objection overruled.

(Testimony of Charles W. Ebnother.)

Mr. Fisk: Has the witness answered the question?

The Referee: No. Mr. Fisk and Mr. Walsh added to the objection and the Court overruled the objection. That's the way the record stands at the moment. [1215]

Mr. La Shelle: You answer the question.

The Witness: May I have the question again, please?

(The Reporter read the last question as follows):

“Question: Referring to those warehouse receipts alone, 3381, 3383 and 3403 which you have examined here recently, would you state that that is Mr. Stone's signature?”

A. Yes, it is.

Mr. Fisk: Well, what is his signature?

Mr. La Shelle: The signature on those three warehouse receipts.

Mr. Fisk: Well, have you looked at the three?

The Witness: Yes, I have.

Mr. La Shelle: Your Honor, if there is any receipt they are going to cross-examine on——

The Referee: It isn't cross-examination; it's merely for clarification of the record. In other words, Mr. Fisk is entitled to know the signature on what?

Mr. La Shelle: I read out the numbers—3381, 3383 and 3403 from Petitioner's Exhibit 49 and he was referring to the purported signatures of Stone

(Testimony of Charles W. Ebnother.)

on those three warehouse receipts, your Honor. Is that right?

The Witness: That's right.

Mr. Fisk: You recall seeing those specific warehouse receipts and the signature of R. I. Stone on those?

The Witness: Yes. [1216]

(Discussion off the record.)

Q. Mr. Ebnother, I show you Petitioner's Exhibit for Identification No. 43 consisting of certain warehouse receipts; 3525 purports to bear the signature of R. I. Stone?

Mr. Fisk: Wait just a minute so I can follow. Would you give me some idea what group you're in?

Mr. La Shelle: 43. I'll reframe the question.

Q. 3525, 3541, 3543, 3544, and 3545 of the warehouse receipts in this group purport to bear the signature of R. I. Stone. Have you examined those as I turned them over? A. I did.

Q. And would you say that that's the signature of R. I. Stone? A. Yes.

Mr. Fisk: Same objection.

Mr. Walsh: May it be understood for the record that the same objection applies to all of this?

Mr. La Shelle: It may be stipulated that they made the same objection, your Honor.

The Referee: Very well, the stipulation is accepted.

Mr. La Shelle: Your Honor, unfortunately, I find that the balance of this group has become a little mixed up and doesn't tally with what you have.



(Testimony of Charles W. Ebnother.)

During the noon hour, I would like to check those against——

The Referee: Mr. La Shelle, is that on 43?

Mr. La Shelle: No, 43 tally perfectly. The balance of these I would like to have the opportunity during the [1217] noon hour of checking them and getting them in order because they become a little mixed up. So I suggest a recess at this time.

The Referee: Very well.

Afternoon Session—2:00 o'clock p.m.

Mr. La Shelle (Continuing): Q. Referring now, your Honor, to Exhibit 50 in evidence which is warehouse receipts beginning with 3511 (for the benefit of Mr. Fisk over there, that's the second group on the schedule; I am not going to bother reading the B's here—just the number; on the warehouse receipts, they all have B's), referring to 3511, 3512 and that's all, that purport to bear the signature on the line "countersigned by," is that Mr. Stone's signature? A. It is.

Q. Now, referring to 51, which is partly in evidence and partly in identification, the warehouse receipts which are not in evidence and the other documents are, so from the standpoint of the record, when I refer to exhibit in evidence here, the warehouse receipts are the same identical number as the evidence number of the checks and the invoices, etc. that are in evidence as shown by the record, this is No. 51, which begins with warehouse receipt No. 3674, referring to 3678, I direct your

(Testimony of Charles W. Ebnother.)

attention to the signature purported to be of Stone and that was the only one in that group. Is that Mr. Stone's [1218] signature?      A. It is.

Q. Referring to the next group of exhibits, which is 52, which begin with 3364, I direct your attention to 3365, 3397, 3414, the signature purporting to be that of R. I. Stone on those numbers I read out to you, would you say that was his signature?

A. I believe so.

Q. Taking the next group, which is 53, directing your attention to the following receipt numbers: 3482, 3484, 3486, 3505, 3509, 3510, 3567, 3568, 3569, 3572, 3573, 3575, 3590, 3592, 3593, 3597, 3598, 3602, 3606, 3610, 3616, 3619, 3621, 3622, 3623, 3624, 3629, 3631, 3665, 3669, and 3670, all of the warehouse receipts bearing the numbers that I just called out which I have shown you, Mr. Ebnother, purport to bear the signature of R. I. Stone, would you say that in review of those signatures that those were Mr. Stone's signatures on those warehouse receipts?

A. I believe it is.

Mr. Fisk: What is your answer, Mr. Ebnother?

The Witness: I believe it is.

Mr. Fisk: You believe it is.

Q. Now, Mr. Ebnother, I have here, I believe its petitioner's Exhibit 6 for Identification, one of the schedules (could I have that, your Honor), referring to Petitioner's Exhibit No. 6, your Honor, (I have used duplicates of that to make certain checks of warehouse receipt numbers for the witness to use in reference), referring to warehouse

(Testimony of Charles W. Ebnoter.)

receipt book beginning with the sequence of numbers 3151 and running [1219] to 3200, of the books which are in evidence, Petitioner's Exhibit No. 2 on this schedule, opposite the warehouse receipt numbers I have drawn a check and on some of them I have drawn an "X". I'm going to run down those. The ones with the check purport to bear Stone's signature; the ones with an "X" do not purport to have his signature at all. So, 3196——

Mr. Fisk: Is the question the ones that purport to have Stone's signature? The document speaks for itself.

Mr. La Shelle: I'm only trying to direct the witness's attention to it. 3198—as I turn to these certificate numbers, would you be good enough to examine the signature on them?

The Witness: All right.

Q. 3198, 3200—What is the next number?

A. 3204.

Q. 3204, 3206, 3211——

The Referee: Not 3211—3213.

Mr. La Shelle: Strike 3211.

Q. 3214—— A. No, 13.

Mr. Fisk: What about 3214, did you pass that or not?

Mr. Walsh: Not yet.

Mr. Fisk: 14 comes before 13.

The Witness: We did pass it. It isn't signed by Stone. [1220]

Mr. La Shelle: In other words, 3211, counsel,

(Testimony of Charles W. Ebnother.)

and 3214 do not even purport to bear Stone's signature, but 3213 does.

Q. 3213, 3217—

Mr. Walsh: Well, now, Mr. Ebnother is not saying anything so I don't see how we can follow anything that is going on.

The Witness: I know, but just one point here. Now, when you get through we'll have a list here with a lot of checks on it.

Mr. La Shelle: I am asking you to look at these warehouse receipt numbers of the numbers that I call out which purport to bear the signature of Stone. Then when I'm through, I'm going to ask you if those signatures you saw on those numbers were his signature.

Mr. Walsh: Why can't he just go through the book himself, Mr. La Shelle, and read the numbers of the warehouse receipts that bear those signatures; otherwise, it's hard to follow him because he nods his head.

Mr. La Shelle: Because there are a lot of other warehouse receipts issued to other people.

Mr. Walsh: I think the proper way, your Honor, is to let him take the books and identify them.

Mr. La Shelle: I have singled them out.

Mr. Walsh: It's a leading question when he asks him— [1221]

Mr. La Shelle: I have a right to ask him a leading question.

Mr. Walsh: He is not an adverse witness. You

(Testimony of Charles W. Ebnother.)

have not called him as an adverse witness. Let the record show that.

The Referee: Could we handle it this way, Mr. La Shelle? You just go through the book with Mr. Ebnother and stop at those places where eventually you are going to ask him a question, let him look at those warehouse receipts.

Mr. La Shelle: That's what I have been doing.

The Referee: We won't have any question in the meantime. Then when you get through going through the list there, you ask him a question and counsel on both sides will have an opportunity to protect themselves.

Mr. La Shelle: That is exactly what I have been doing, your Honor.

Q. 3217?           A. Check.

Q. 3218?           A. Check.

Mr. Walsh: What was your answer?

The Witness: Check.

Mr. Fisk: He's going to ask him a question at the end of all of this.

The Witness: What did you want me to say?

The Referee: I want you to say nothing, Mr. Ebnother, until Mr. La Shelle gets through calling these numbers [1222] out.

Q. 3218, 3222—

Mr. Fisk: I would like to have the record show he didn't even look at that document.

Mr. La Shelle: Well, now, Mr. Fisk—

Mr. Fisk: I am looking right at him.

The Witness: Which one, sir?

(Testimony of Charles W. Ebnother.)

Mr. Fisk: 3218; he didn't even look at them.

Mr. La Shelle: Well, you are imputing the good faith and motive of this witness.

Mr. Fisk: No, I am not imputing anything.

Mr. La Shelle: You certainly are. Here is a witness that is trying to cooperate and all you do is cast slurs on him.

Mr. Walsh: Your Honor please, I ask that that go out.

Mr. La Shelle: I ask that it stay right in there.

Mr. Walsh: You think you are trying a personal injury case over in San Francisco.

Mr. La Shelle: What you think you are trying is out of this world, Frank.

Q. 3222, 3224, 3226, 3227, 3228, 3231, 3232, 3234, 3235, 3237, 3242, 3243, 3248, 3250,—

(Discussion off the record.)

Q. This is the next book, your Honor, Petitioner's Exhibit No. 4 in evidence, with the sequence of warehouse receipts [1223] running from 3251 to 3300, starting with 3251, 3254— A. No.

Q. Has the word cancelled written over some signature. Can you make that out?

Mr. Walsh: Now, just a minute, if your Honor please, I object to that question. The warehouse receipt itself shows that it has no signature of the Hedgeside Distillery on it and the only signature on it is the counter-signature which has the word "cancelled" over it.

Mr. La Shelle: I'm only asking if the witness

(Testimony of Charles W. Ebnother.)

can figure out what the signature is over the word "cancelled." I am just asking him if he can.

Mr. Fisk: It only shows the fallacy of the examination.

The Referee: I don't see the materiality of it.

Mr. La Shelle: I am qualifying the signatures of Stone, your Honor, and it would appear to me in giving testimony that Stone is there, but the word "cancelled" is written. I am just simply asking the witness if he is able to make out any signature in connection with the word "cancelled"; if he says no, that's the end of it; if he says yes, he can answer.

The Referee: Supposing he says yes, how would that affect 3254? It isn't signed by Hedgeside. What is the materiality of this particular warehouse receipt in [1224] these proceedings.

Mr. La Shelle: This is a warehouse receipt issued to Barnhill on which we trace our chain of title. It was exchanged for other warehouse receipts; your Honor may have forgotten.

Mr. Fisk: No presumption——

The Referee: There is no signature as far as this warehouse receipt is concerned, is there?

Mr. La Shelle: This only has the signature of Stone, as I said, on the counter-signature. In other words, they overlooked the signature. The point of it is, (your Honor may have forgotten the early part of this case) this is some of the Heaven Hill whiskey and these were turned in for negotiable receipts and then the negotiable receipts were again

(Testimony of Charles W. Ebnother.)

turned in for non-negotiable receipts, so this is the first sale of that whiskey to which we trace our chain of title. That's the purpose of this.

Mr. Fisk: Is that document in evidence?

Mr. La Shelle: Sure, it is.

Mr. Fisk: It's in evidence?

Mr. La Shelle: Yes.

Mr. Fisk: What is the point of it?

Mr. La Shelle: I want to qualify these signatures of Stone.

The Referee: What exhibit is this? [1225]

Mr. La Shelle: No. 4.

The Referee: You may proceed.

Mr. Walsh: Wait a minute, No. 4 is for Identification, if your Honor please.

Mr. Ward: In evidence.

The Referee: In evidence subsequently.

Mr. La Shelle: I am simply asking the witness as to receipt——

Mr. Walsh: May I have a ruling on that objection?

The Referee: Objection overruled.

Q. Directing your attention to 352——

Mr. Fisk: The objection is overruled. Is there an answer in there?

The Referee: He hasn't got an answer to his question yet.

Mr. Fisk: What's the answer?

Mr. La Shelle: I was just going to repeat the question. I am sure the witness has forgotten it.

Mr. Fisk: Let the reporter read it.



(Testimony of Charles W. Ebnother.)

The Witness: The witness doesn't want to answer the question. You have it checked here as not being Mr. Stone's signature if I am going to rely upon this list—

(Laughter)

Mr. La Shelle: I don't want you to rely upon this list; I want you to rely upon what you see here. That's [1226] just for my own convenience of picking them out.

Q. 3254 appears to have some signature and then more or less over it is written in large ink, the word "cancelled." Do you make out any signature there and recognize it?

A. Well, my answer to that would be no.

Q. 3255, 3266, 3269, 3270, 3272, 3293, 3294, 3295; that's all in this book. One more. Referring to Petitioner's Exhibit No. 5 in evidence and directing your attention to receipt No. 3303, now with reference to those receipt numbers which you checked, were the signatures on those purporting to be those of R. I. Stone—his signature?

A. I believe they were.

Mr. Fisk: Same objection.

The Referee: It is stipulated that the same objection went to all of these matters with reference to Stone's signature and it's also understood by all three counsel that the Court's ruling was the same in all matters.

Mr. La Shelle: So understood, your Honor.

Mr. Fisk: I make an additional objection in

(Testimony of Charles W. Ebnother.)

these last cases that the documents are already in evidence, irrelevant, incompetent and immaterial.

The Referee: Overruled. And Mr. Ebnother's statement with reference to the one warehouse receipt was that you couldn't make out the signature.

Mr. La Shelle: That one number. I have forgotten what it was just now, your Honor. [1227]

Q. Now, Mr. Ebnother, when you took over as trustee of this bankrupt under the jurisdiction of this court, that was about in June, wasn't it?

A. I took over as receiver in June.

Q. Pardon me? A. As receiver in June.

Q. As receiver in June. And then later on, as trustee. A. Right.

Q. And when you took over as trustee, I take it, that you took over all of the assets of the company which you could find, did you not?

A. Yes, I did.

Q. And with reference to still houses, distillery warehouses, offices or buildings of that nature or the like, did you find any buildings of that character in any county other than Napa County?

A. No.

Q. In other words, the assets of the corporation, so far as offices, distillery, warehouses, and so forth, were all located at Napa, were they not?

Mr. Fisk: Well, I object to that as calling for the conclusion of the witness, your Honor.

The Referee: Mr. Ebnother can testify as to what assets he found with reference to the time you took over there with reference to the buildings and

(Testimony of Charles W. Ebnother.)

locations and so forth at that time that you found, so so far as the objection to his answer goes, why my ruling is in accordance with my statement. [1228]

A. They were all in Napa County; so far as I am able to remember, I'm sure they were. Franciscan is outside of that area but it's still in Napa County.

Mr. Fisk: Could I have the last answer——

A. (Continuing) The property of Franciscan Land & Cattle Company is a few miles away but it is still in Napa County, I'm certain.

Q. I think by that you mean, don't you, Mr. Ebnother, that the bankrupt corporation owns stock in Franciscan.

A. That's right.

Q. Franciscan owns the real property and Hedgeside owns the stock so that would be——

Mr. Fisk: I ask that that answer go out.

The Referee: So ordered.

Mr. La Shelle: Your Honor, this is cross examination.

The Referee: He is testifying as to the assets and the locations and so forth that he took over as trustee in bankruptcy.

Q. You did not take over the Franciscan assets, did you, as trustee?

A. Well, no, I took over the stock—the half interest in the stock.

Q. That's just what I wanted to develop. And

(Testimony of Charles W. Ebnother.)

the physical assets, such as, the buildings of the bankrupt corporation——

Mr. Fisk: What do you mean by a half interest in [1229] the stock?

The Witness: Half interest in the stock outstanding of Franciscan Land & Cattle Company.

Mr. Fisk: Your Honor, I ask that the answer go out. It's a conclusion of the witness as to what he took over. The written records of the two corporations will show that. I don't know what the half interest of the stock is.

Mr. La Shelle: What the witness means is that the assets of Franciscan that were owned by the bankrupt were stock, is that right?

A. That's right.

Mr. La Shelle: Stock of the Franciscan corporation.

Mr. Fisk: Your Honor, I object to that as leading and suggestive and it calls for the conclusion of the witness.

Mr. La Shelle: I have a right to lead this witness as an adverse witness.

Mr. Walsh: He has not the right to lead this witness.

The Referee: Just a minute, gentlemen. The thing we are concerned about is Mr. Ebnother's answer to your question and Mr. Ebnother said that as trustee in bankruptcy he took over a half interest in the stock of Franciscan. Is that what you testified to?

The Witness: Yes, sir.

(Testimony of Charles W. Ebnother.)

Mr. Fisk: But, your Honor, I object. That calls for a conclusion. If he wants to testify that he [1230] physically took over some stock then all right, but he didn't physically take over some stock; I happen to know that.

The Referee: I am just assuming the man understands the question.

Mr. Fisk: He doesn't understand the question at all. He's not a lawyer. He can't testify what the position was. Now, if he physically took over some stock of Franciscan, that's one thing; but he didn't.

Mr. La Shelle: I can avoid all of this, your Honor, on a very simple thing if counsel wish to stipulate to the facts. I am just simply trying to establish by this witness, among other things, that the principal place of business of this bankrupt corporation is at Napa, California, a fact which everyone in this courtroom knows.

Mr. Fisk: That wouldn't prove it.

Mr. La Shelle: No, but we've got to prove today is Tuesday.

The Referee: Then when you started asking about Franciscan there, there is an objection. We can't just forget about it.

Mr. La Shelle: He misunderstood and referred to Franciscan's physical assets as distinguished from the stock represented.

The Referee: Let me ask him; then we'll take care of [1231] the objection, too.

By the Referee: Q. With reference to Fran-

(Testimony of Charles W. Ebnother.)

ciscan, whether physical property or stock or documents or anything else, as trustee of Hedgeside, what did you take into your possession?

A. I took over a half interest in the Franciscan Land & Cattle Company—a half of the total outstanding stock of that corporation.

Q. Did you actually take—what I am trying to find out is, did you take certificates into your possession or did you take shares of stock or what did you take?

A. It's my memory that I took certificates. Mr. Fisk apparently doesn't agree with that, but I still think that that is the truth.

Mr. Fisk: Of course you didn't. I have got them myself.

Mr. Walsh: Mr. Ebnother, you don't mean that.

Mr. Fisk: Of course, you don't.

The Witness: Well, if I don't mean it—I'm still of the opinion that I did.

Q. In any event, Mr. Ebnother, you do understand Mr. La Shelle's question.

A. I do understand what Mr. Fisk is talking about—that stock was pledged at the Anglo Bank.

Q. Well, realizing the comments that have been made and the question that Mr. La Shelle asked of you, you're still [1232] willing, even though you may be wrong, your present answer is just as you gave it.

A. Yes, I would say it is.

Mr. Ward: I think the witness has used the word Franciscan—I think the witness had a few

(Testimony of Charles W. Ebnother.)

words after Franciscan. He was referring at all times to a certain company.

The Referee: Franciscan Farm & Livestock Company, is that it?

Mr. Ward: That wasn't my understanding.

The Witness: Franciscan Land & Cattle Company.

The Referee: Is that what we are talking about now?

Mr. La Shelle: No, what I am trying to develop—

The Referee: I know what you are trying to develop, but these series of questions of Mr. Ebnother as to the half interest he took over, was that the Franciscan Land & Livestock Company?

Mr. La Shelle: Well, the only name I know is Franciscan Farm & Livestock Company.

The Witness: Well, it might be that; I'm not positive which it is.

Mr. Walsh: Franciscan Farm & Livestock.

The Referee: And your answer still goes to the Franciscan Farm & Livestock.

Mr. La Shelle: What I am after here is in the way of what assets you took over, not intangible, such as [1233] stock certificates, but physical things, such as buildings and land and equipment with reference to the physical assets, buildings and land, offices under lease, all matters of that kind. Did you take into your possession any assets other than those located at Napa in Napa County, California?

A. No.

(Testimony of Charles W. Ebnother.)

Q. Now, Mr. Ebnother, on or about October 7, 1949, you were served with a copy of the original of this subpoena (and I am referring to the subpoena on file in this case) in which you were asked to bring with you among other things, public warehouse licenses for the fiscal years '43, '44, '48, and '49, inclusive, and distilled spirits manufacturer's licenses for the same fiscal years in question, as well as various other things, such as warehouse receipt books, most of which you have already brought in in response to the subpoena. Am I correct in understanding that the licenses listed in that subpoena, state licenses, you were unable to find?

A. I believe you are, yes, sir.

Q. You made a search but could not find it.

Mr. Walsh: For the purpose of the record, are you also speaking about a public warehouse license too?

Mr. La Shelle: Exactly that. Your Honor, I know that in one of my questions I apparently made a mistake. I referred to the subpoena on file. It's not on file. It was in my file. I'll file it now, if I may. That's all the questions I have of this [1234] witness, your Honor.

The Referee: Mr. La Shelle, do I understand, subject to anything that might be developed by the attorney for the bank or the attorney for the trustee, you have no further need for Mr. Ebnother in these proceedings?

Mr. La Shelle: I don't think so, your Honor, unless I've overlooked something. I hope I haven't.



(Testimony of Charles W. Ebnother.)

If I have, I reserve the right to recall him, of course.

The Referee: For the time being, you are completed.

Mr. La Shelle: Before I rest this case, I am going to have to review it pretty thoroughly and make sure I haven't overlooked something.

The Referee: Mr. Walsh, this is the day that you are required to adjourn early. Do you or Mr. Fisk anticipate any lengthy cross-examination of Mr. Ebnother?

Mr. Walsh: Well, I would like to examine him on some points, your Honor.

The Referee: Don't you think you could— Would you prefer to go on now?

Mr. Walsh: No, I would rather go on tomorrow.

The Referee: Mr. Fisk, what is your feeling?

Mr. Fisk: Well, I want to ask him a few questions.

The Referee: Well, we might as well then use up the time until three. Then Mr. Walsh, you can examine Mr. Ebnother tomorrow. [1235]

#### Cross-Examination

Q. (By Mr. Fisk): Mr. Ebnother, with regard to your search for documents requested in the subpoena which is referred to and filed by Mr. La Shelle in this proceeding, what specific documents did you look for?

A. It was as enumerated on that subpoena there.

Q. Would you look at this and state for the record, what documents you looked for?

(Testimony of Charles W. Ebnother.)

A. Public warehouse licenses— Do you wish me to read the numbers of all of them?

Q. I want to know what you looked for.

A. E959, 1948 and '49; E87-C, '47 and '48; E59-B, 1946 and '47; E98-D, 1945 and 1946; E130-H, 1944 and 1945; E-224-G, 1943 and 1944 and distilled spirits manufacturer's license K23D 1948 and '49; K14C, '47 and '48; K11B, '46 and '47, K422A, 1945 and 1946; K482H, 1944 and 1945; K644G, 1943 and 1944.

Q. Now, where did you make your search for the documents just referred to, generally speaking?

A. Well, I first looked in the little place on the wall where anyone would expect those documents to be and I looked there.

Q. On the premises of the Hedgeside?

A. Hedgeside office.

Q. What is the address of Hedgeside Distillery?

A. It's at Monticello and Atlas Road.

Q. And you looked through the records and files in the [1236] offices at that location, is that right?

A. Part of them, yes.

Q. And where else did you look?

A. I looked no place else but in that office there.

Q. Now, when you were looking for those documents and referring to the subpoena just referred to, do you know what is referred to when it says "public warehouse license"?

A. No, I wouldn't say that I did any more than what's described on there.

Q. Do you know what institution or body is re-

(Testimony of Charles W. Ebnother.)

ferred to in that statement—public warehouse license? Do you know what public body or political organization issues the documents referred to there?

A. No, I do not.

Q. You have no idea, is that right?

A. No, I do not.

Q. You just simply looked for a document bearing the letter and description and date that you just referred to, is that right?

A. That's right. As a matter of fact, I think later we found part of those licenses, but I don't have an exact record of what we found and what we didn't find.

Q. Well, then you think that maybe you did find some of these licenses.

A. We may have found some of those later on. The first time we looked for them, I reported back to Mr. La Shelle that I couldn't find them and my memory is that we later went [1237] into some old correspondence files and that we did find some of them. I'm not positive on it now.

Q. Are you now referring to public warehouse license or distilled spirits manufacturer's license?

A. The fact is I don't know, Mr. Fisk.

Q. You don't know.           A. No, sir.

Q. In other words, some of the documents you have just referred to you think you have subsequently located but you don't know which ones.

A. Which ones.

Q. You don't know anything about what the contents of those documents are.           A. No.

(Testimony of Charles W. Ebnother.)

Q. And you know nothing about the description, other than what's stated in the subpoena, is that right?

A. That's right, except by inference.

Q. Now, in answer to certain of Mr. La Shelle's questions, you stated that when you took over as receiver in this proceeding that you took physical possession of certain property which you believe belonged to the bankrupt, is that right?

A. That's right.

Q. You don't know in all respects whether or not the property you took possession of belonged to the bankrupt or not, do you?

A. No, I know it didn't, all of it.

Q. Now, you mentioned taking over a one-half interest in the stock of the Franciscan Farm & Livestock Company, do you recall that?      A. I do.

Q. Do you mean that you took over a one-half interest in all [1238] of the issued and outstanding stock of that corporation?

A. That's my understanding.

Q. Did you take physical possession of any stock certificates?

A. Those stock certificates at that time, if my memory is correct, were——

Q. Wait just a minute. Did you get my question?

A. Did I take physical possession of those stock certificates.

Q. Of any stock certificates at that time. Now, you can answer that yes or no and then explain.

(Testimony of Charles W. Ebnother.)

A. At that time, no.

Q. All right, have you since that time taken over physical possession of any stock certificates of that corporation?

A. I have had them in my possession, Mr. Fisk, and I'm not positive whether I had them in my files or not—probably not.

Q. From whom did you obtain physical possession of those stock certificates?

A. I was in the Anglo Bank and I had them in my hands and saw them in the Anglo Bank.

Q. Did you remove them from the bank?

A. I'm not sure as to that.

Q. Do you have any recollection on it at all?

A. No, I do not.

Q. Do you know where they are at the present time? [1239]

A. No, I'm not. I either have them or they are still in the Anglo Bank. I'm not sure which. I think probably in the Anglo Bank.

Q. From whom did you obtain them at the bank?

A. I didn't answer definitely that I had obtained them, if I remember correctly. I think from somebody in the teller's cage at the time I examined them.

Q. You don't remember their names.

A. No.

Q. Can you fix the time?           A. No.

Q. But you do know that you do not have physical possession of them now.

The Referee: He said that they were either in

(Testimony of Charles W. Ebnother.)

his possession or in the possession of the bank. Is that what you said?

A. I'm not sure, Mr. Fisk, whether I have physical possession of them or whether they're in the possession of the bank. They're probably still in the possession of the bank, knowing banks, but my mind's a little cloudy on it. I have a whole file of stuff on the Franciscan Land & Cattle Company and I doubt if that is in there.

Mr. Fisk: Well, now, your Honor, I was going into these warehouse receipts and I don't know whether I should start on them.

Mr. La Shelle: May I just mention one thing here, your Honor? My recollection has been, as I stated, that he made a search for those licenses and he did [1240] report to us that he couldn't find them. Today is the first intimation I have had at the cross-examination of Mr. Fisk that he thinks he found some of them. If he has, I'd like them because I have subpoenaed them and if they're available, I want them.

The Referee: As I gathered Mr. Ebnother's answer on cross-examination, he made an initial search and could not find the documents that you requested. Subsequently, it's his recollection that he found some of the documents in an old correspondence file but you were not definite as to just what the documents were.

The Witness: That's correct, but I am fairly certain that if I did find some, I turned them over to Mr. La Shelle with those— You remember, at

(Testimony of Charles W. Ebnother.)

the same time that I brought you this other stuff that you had photostated.

Mr. La Shelle: No, the 27-D is what he turned over.

Mr. Ward: The first search for the 27-D was fruitless also. The second search, he found them in a big box in which these seven warehouse receipts were and the minute book and the 27-D's were there in a correspondence folder. Those are the ones that I now have that we have introduced in evidence. Those were found on a second search.

The Referee: After Mr. Ward's statement with reference to the 27-D's, does that help your recollection? [1241]

The Witness: It's probably—what he has mentioned there is probably what I am thinking about because I know we did find something we said we didn't have which I brought down here and turned over to Mr. La Shelle the next trip.

The Referee: So any documents listed in Mr. La Shelle's subpoena, whether you found them the first or second time, they are not now in your possession.

The Witness: That's right.

The Referee: They're in his——

The Witness: They're in his possession.

The Referee: Regardless of what the documents are. It's three o'clock.

Mr. Fisk: I'll go ahead if the Court wants me to.

The Referee: Mr. Walsh told us two months ago

that three o'clock is departing time on Wednesday and he is going to have Mr. Ebnoter tomorrow.

(An adjournment was taken until Thursday, March 30, 1950, at 10:00 a. m.) [1242]

Thursday, March 30, 1950, 10:00 a. m.

CHARLES W. EBNOTER

having been previously sworn, resumed the stand and testified further as follows:

Cross-Examination (Continued)

By Mr. Fisk: Q. Mr. Ebnoter, is the Hedge-side Distillery premises in the City of Napa or just in the County of Napa?

A. In the County of Napa, I think—not in the city.

Q. You said it's on Atlas Way. Do you know the number?

A. No, I do not. There is no number there. It's the intersection of Atlas Way and Monticello Road.

Q. What is the mailing address—Box 269, Napa?

A. Yes, Box 26—I believe it's 269.

Q. Now, yesterday you were shown Petitioner's Exhibit 3 and asked to identify certain signatures in there with respect to Petitioner's Exhibit 6 for Identification, do you recall that? A. Yes.

Q. Do you know where this book was kept during the years '47 and '48? A. No, sir.

Q. Do you know who kept the books during those years?

A. Not positively. Mr. McMains was supposed



(Testimony of Charles W. Ebnother.)

to keep that record—did keep that record in the year '49. Whether he did before or not, I do not know.

Q. Well, now, you say he was supposed to. Do you know of your own knowledge that he kept it or not?      A. No, I do not. [1243]

Q. I take it you also don't know whether he kept it or who kept it in the years '47 and '48.

A. No.

Q. Or '46.      A. No.

Q. Or where it was kept.      A. No.

Q. You testified yesterday that there had been certain immaterial changes made in these records. Were any such changes in this exhibit as far as you know?

A. I don't know what the changes were now, Mr. Fisk. They were of no—all I remember is that they were of no consequence in this way, that they simply completed that record there.

Q. Well, this Petitioner's 3, you say, was completed after you took possession of it?

A. There were certain cancelled receipts that were later put in the book which were not first in it.

Q. Well, by cancelled receipts, you are referring to the warehouse receipts?

A. The original warehouse receipts.

Q. You can't look at this book and tell which were placed in after you took over and which were not?      A. No, I cannot.

Q. Take warehouse receipt 3204-B, do you recall that one?      A. No, I don't recall it.

(Testimony of Charles W. Ebnother.)

Q. Well, didn't you examine it yesterday and identify a signature on it or do you recall?

A. Well, I identified a lot of signatures, Mr. Fisk.

Q. But you don't recall what you identified today with what [1244] you identified yesterday?

A. No, I do not without the record to refer to. I can't remember all those numbers.

Q. Then when you gave the statement in response to Mr. La Shelle's question that signatures on all of the warehouse receipts he called the numbers out that signature, R. I. Stone to the best of your belief was Stone, you don't know whether that's true or not, is that right?

A. That was correct at that time because I had the list right in front of me to which I could refer.

Q. Well, you didn't have the list right in front of you when you answered that question, did you?

A. I don't remember.

Q. Well, going back to warehouse receipt 3204-B, can you say whether or not that receipt was in that book when you took over as receiver.

A. No, I cannot.

Q. You cannot.           A. No.

Q. And you don't know of your own knowledge whether or not this receipt was ever taken out of the book, do you?           A. No.

Q. Now, would you answer those two questions the same way with respect to all of the other——

Mr. La Shelle: I object to the form of that ques-

(Testimony of Charles W. Ebnother.)

tion, your Honor. I don't think that's proper cross-examination.

The Referee: You mean, with reference to all of the ones that Mr. La Shelle asked him about yesterday. [1245]

Mr. Fisk: He interrupted me before I had a chance to finish.

The Referee: Very well.

Q. Would you answer those two questions the same way with respect to each of the warehouse receipts as to which you identified his signature yesterday?

Mr. La Shelle: I object to the form of that question, your Honor. I don't think it's proper cross-examination.

The Referee: Just a minute, Mr. La Shelle. Would you read the two questions that Mr. Fisk asked Mr. Ebnother?

(The questions referred to and the answers thereto were read by the Reporter.)

Mr. Fisk: I'll withdraw that.

Q. Take Petitioner's Exhibit 3 and tell me whether or not you can say there is any warehouse receipt in that book, either original or copy which you know of your own knowledge was not there when you took it over?

A. I can't answer that. That is, I can't—Will you repeat your question?

(The last question was read by the Reporter.)

A. No.

Q. And you don't know whether or not any of

(Testimony of Charles W. Ebnother.)

the original warehouse receipts in that book was ever at any time removed from the book, do you?

A. No, I don't believe I do. [1246]

Q. How long have you known Mr. R. I. Stone, the president of the bankrupt?

A. Since the early part of June.

The Referee: What year, Mr. Ebnother?

The Witness: Since the early part of June.

The Referee: What year?

The Witness: Oh, 1949.

Q. Have you ever had occasion to cash any checks of his?

A. No. Well, now, wait a minute. Wait a minute. I have received one or more checks from him, put it that way.

Q. Checks in which he was the maker?

A. Yes.

Q. And did you cash those checks?

A. Let me think a minute. I'm not even positive of that. I received a check from Mr. Stone, but I don't believe that he signed it in his personal capacity.

Q. Have you ever had any business transactions with Mr. Stone in which you relied on his signature?

A. In which I relied upon his signature.

Q. In connection with a business transaction.

A. I think the answer is no.

Q. With respect to any of the original warehouse receipts in Petitioner's Exhibit 3 as to which you identified the signature of R. I. Stone, do you know of your own knowledge when he placed his signa-

(Testimony of Charles W. Ebnother.)

ture on any of those documents?      A. I do not.

Q. And you know nothing of the circumstances surrounding [1247] his placing his signature on the documents?      A. No.

Q. Now, with respect to Petitioner's Exhibit 4 which was shown to you yesterday and as to which you identified certain signatures purporting to be signature of R. I. Stone, will you look at that exhibit and tell me whether or not you know of your own knowledge whether or not any of the original certifications were ever removed from that book?

A. No, I do not know if they were.

Q. And you can't say which of them, if any, were replaced in the book after you took over possession, is that correct?      A. That's correct.

Q. Do you have any personal knowledge of when this signature of R. I. Stone was placed on any of those original warehouse receipts?      A. No.

Q. Nor the circumstances under which it was placed on there.      A. No.

Mr. Fisk: That's all I have.

The Referee: Mr. Walsh?

Mr. Walsh: The examination by Mr. Fisk covered the questions I was going to ask.

The Referee: Mr. La Shelle?

Mr. La Shelle: I just have a couple of questions here.

### Redirect Examination

By Mr. La Shelle: Q. With reference to Exhibits 3 and 4 and the other warehouse receipt books

(Testimony of Charles W. Ebnother.)

that are in evidence—I forget the number. [1248]

The Referee: 1, 2, 3, 4, and 5.

Mr. La Shelle: And then there are quite a few others; I forget their numbers.

The Referee: These are marked for identification, Petitioner's Exhibit 59 and there are seven books.

Q. As I recall your testimony yesterday, when we referred to those seven books that are marked for identification as distinguished from the ones that are in evidence, it was with reference to those books that you said there were no material changes in them, wasn't that correct?

Mr. Fisk: I object to this, your Honor, as improper redirect examination.

The Referee: Overruled. You may answer.

A. Well, I don't know. As a matter of fact, when you say Exhibit 3 and Exhibit 7 that doesn't mean anything to me at all.

Q. Well, I'm referring to these books that we had yesterday, these seven books here that are Petitioner's Exhibit 59. My recollection is that when I asked you if those books were in the same condition as they were when you found them, it was with reference to these seven books that you said there was no material change and then you mentioned putting in some receipts that were loose.

Mr. Fisk: Well, your Honor, I object to that. The record speaks for itself. There is no use confusing the record. [1249]

(Testimony of Charles W. Ebnother.)

Mr. La Shelle: All right, I am asking the question.

The Referee: Just a minute. Mr. Ebnother, will you take a look at these seven books so you will familiarize yourself? Take a look at those seven books that are marked merely for identification No. 5 and Petitioner's Exhibit No. 1, 2, 3, 4, and 5 which are the five first books which were brought down here—one negotiable and four non-negotiable. Are you familiar with any difference between those books as far as their purposes here for the moment are concerned?

*The Witness:* You may answer. The objection is overruled.

(The last question was read by the Reporter.)

Q. Is that correct?

A. There have been no material change in those.

Q. I know, but was it with reference to these seven books, referring to exhibit—

A. The record would have to show that one—

Q. All right, now, did you find any copies missing from these books or was it originals that you put in, whatever they were?

A. There were quite a large number of originals missing from the whole group of books. As a matter of fact, still are.

Q. Well, if an original is issued and given to someone, naturally it's not in the book, is that right?

A. That's right.

Mr. Fisk: I object to that as calling for a conclusion [1250] of the witness.

(Testimony of Charles W. Ebnother.)

The Referee: Sustained.

Mr. Fisk: I ask the answer go out.

The Referee: Sustained.

Q. About how many receipts did you put in the books, roughly—all of these books put together?

Mr. Walsh: Your Honor please, I submit that's not proper redirect examination.

The Referee: Overruled.

By the Referee: Q. Mr. Ebnother, you testified yesterday that you found certain loose warehouse receipts in an old correspondence file at Hedgeside. Do you recall testifying to that? A. Yes, I do.

Q. Now, bearing that in mind, try to answer Mr. La Shelle's question.

A. Well, I can't answer it accurately but it was a very small number. There were not many of them. I would say, possibly four or five at the outside.

Mr. Walsh: Your Honor please, I submit that the question should show that these were warehouse receipts which were involved in this proceeding—not a general question, were there warehouse receipts found in the records over there.

The Referee: Well, Mr. Walsh——

Mr. Walsh: Just a minute. In all fairness to the [1251] witness, his attention should be directed to these particular warehouse receipts.

The Referee: Counsel on both sides have asked him with reference to material changes in these warehouse receipts and missing warehouse receipts and what is good for one side is good for the other, in my opinion.



(Testimony of Charles W. Ebnother.)

Mr. Walsh: I never asked him.

The Referee: Well, the question was here yesterday without objection with reference to some loose warehouse receipts that he found in explanation of his answer to a question that there were no material changes in these books from the time he took them over up until yesterday. And he explained material changes by saying that he found some loose warehouse receipts in an old correspondence file.

Mr. Fisk: Are you through, Mr. La Shelle?

Mr. La Shelle: No, I have a couple more questions here.

By Mr. La Shelle: Q. Under Mr. Fisk's examination a few moments ago, reference was made to some check which you believe Mr. Stone had given you and then you stated that in your recollection it was not a personal check or signed in his personal capacity. Was it a check of Hedgeside signed by Stone? A. No.

Q. What was the check? Did he sign the check at all in any capacity?

A. I don't think he did. [1252]

Q. You don't recall that.

The Referee: He says he doesn't think he did.

A. I don't believe he did, no.

Q. Now, with reference to the four or five or approximately that of things that you put back in the warehouse receipts in question here, do you recall whether those were copies or originals?

A. Well, they were originals.

(Testimony of Charles W. Ebnother.)

Q. And do you recall whether they were cancelled originals or not?

Mr. Fisk: Well, I object to that as calling for the conclusion of the witness. He can state whether it had a cancelled mark on it.

Mr. La Shelle: That's what I mean and I'll so reframe the question.

The Referee: Very well.

A. I can't answer that.

Q. Directing your attention to Petitioner's Exhibit No. 3 and the warehouse receipt that Mr. Fisk directed your attention to, 3204-B, would you please examine that with reference to the original which purports to be marked cancelled and the yellow copy and the pink copy with reference to the perforation of the stubs in the—do you find scotch tape there?

Mr. Walsh: Your Honor please, I submit that the document speaks for itself.

Mr. Fisk: The document speaks for itself.

The Referee: Sustained. [1253]

Mr. La Shelle: I direct the attention of the Court then from the physical evidence that the perforation between the receipt and the stub looks and that the original and two copies have scotch tape to hold them. That will be of some effect in this case at a later date on another witness.

Mr. Fisk: You mean to infer that the copies were removed as well as the originals?

Mr. La Shelle: Yes, the copies are pasted in with scotch tape too.

Mr. Ward: They would have to be taken out of

(Testimony of Charles W. Ebnother.)

the book, Mr. Fisk, and typed up, you know. You can't type the book all at once.

(Discussion off the record.)

Q. Mr. Ebnother, when you brought those seven books down, which are Petitioner's Exhibit No. 59, I believe, about when was it that you brought those down—what month of what year?

A. What month of what year?

Q. Yes. A. I don't remember now.

Q. I mean, about what time of what year—

Mr. Fisk: What do you mean by "brought down something"?

Mr. La Shelle: From Hedgeside.

Mr. Fisk: Brought it down to the courtroom, you mean, from Hedgeside?

Mr. La Shelle: Yes. You brought those down, did you [1254] not, from the Hedgeside plant at Napa?

A. Yes, I believe I did.

Q. Brought it down to the bay area, let's put it that way. A. Yes.

Q. And who did you give them to?

Mr. Walsh: Your Honor please, I am going to object to that question as incompetent, irrelevant and immaterial.

The Referee: What is the significance, Mr. La Shelle, might I ask?

Mr. La Shelle: Well, Mr. Fisk has asked a lot of questions about these books. These were brought down many, many months ago. At least three of them were found in the back of Mr. Fisk's Buick.

(Testimony of Charles W. Ebnother.)

The Referee: Well, tell me the significance.

Mr. Fisk: What's the significance?

Mr. La Shelle: I want to know if there is any question about any changes about those books, I want to know in whose possession they have been since they were brought down.

Mr. Fisk: Well, that's all right. I have no objection.

The Referee: Very well. You may answer, Mr. Ebnother?

A. Well, I can't answer that question.

Q. Well, you brought the books down, didn't you? [1255]

A. I believe I did.

Q. And then what did you do with them?

A. Well, when you take the aggregate group, frankly, I don't know how they were handled.

By the Referee: Well, let's help it out this way. When this proceeding first started quite a few months ago, you brought down five books into this courtroom. How many you brought from Napa, I have no idea. You brought five of them at that time and that's quite a few months ago.

A. That's right.

Q. Did you bring the other seven at that same time as the first five were brought into this courtroom?

A. I believe not. I believe they were brought up later.

Q. So then at a subsequent date, you brought these seven other books. Now, where did those books go when they left the office at Napa?

(Testimony of Charles W. Ebnother.)

A. Well, I can't answer that, your Honor, accurately or exactly because I don't remember at this stage of the game. They were not in anybody's—so far as I know, there was nothing done to them. There was no reason why I should remember exactly what——

Q. Well, Mr. Ebnother, we know this. We know that they were at the Hedgeside office.

A. Yes.

Q. Or they were at Napa, we'll say. We also know that you [1256] are here now sitting on the desk. Where have they been, other than those two places, in the interim?

A. Well, they were in Mr. Walsh's office, I believe, for a few days, part of them, and the only other place that I can think of would have been in the back of Mr. Fisk's car. I think they were in there for awhile.

The Referee: Very well, Mr. La Shelle.

By Mr. La Shelle: Q. Just one question here that I am getting for information, really, to make sure. The plant up there of the bankrupt corporation, if I got that right, it's Atlas Way and Monticello?

A. Monticello Road. I think it's on the——

Mr. Walsh: It's right on the warehouse receipt.

The Referee: Off the record——

(Discussion off the record.)

The Referee: Very well. Anything further, Mr. La Shelle, Mr. Fisk or Mr. Walsh?

Mr. Walsh: Yes, I would like to ask one ques-

(Testimony of Charles W. Ebnother.)

tion along the line of Mr. La Shelle's examination.

### Re-Cross Examination

By Mr. Walsh: Q. Now, Mr. Ebnother, did any representatives of the Schenley Distillery Company examine these records at Hedgeside Distillery while you were there? A. Yes.

Q. Who? A. Mr. Johnson.

Q. Yes. Did he examine these particular warehouse receipt books? [1257]

A. Well, the way the work was done there, the first time Mr. Johnson was there, he had the pencil work sheet; I had the receipt books and I called the numbers and the description from the receipt to Mr. Johnson and he recorded them. He did not see each one because at that time we didn't know how this thing was going to go or who would know and who wouldn't know and I deemed it advisable to keep control of the books myself and only to pass the information on to him.

By the Referee: Q. When you say he didn't see each one, what do you mean—he didn't see every book or every receipt?

A. Well, he sat here (indicating) and I sat here (indicating); he had the pencil and the number of sheets of work paper and I would call—I had the books in a pile in front of me and I would call the number, who the receipt was made to, what it covered and the complete description which he recorded on his sheet, the only exception being that on those receipts which were not Schenley receipts, I did

(Testimony of Charles W. Ebnother.)

not call the name of the person to whom it was made out. I figured that that wasn't any concern of his. So if it was Schenley receipt, why I would call it Schenley and the number and all about it; if it was another receipt, I would call the number and the same information but I left out the name of the person or company to whom the receipt was made.

By Mr. Walsh: Q. Were these particular warehouse receipts that you found [1258] in the other records of Hedgeside placed in the books before Mr. Johnson examined them?

A. That I don't remember, Mr. Walsh. In my opinion, those were not of any value anyway so I gave very little attention to it. You see, I just figured they were there; in order to put them where they could be found, they were put in the books where they belonged.

Q. Isn't it a fact, Mr. Ebnother, that a certified public accounting concern representing Schenley's also examined the books?

Mr. La Shelle: Just a moment, your Honor, we object to the form of that question as leading, not cross-examination. This is counsel's own witness, his own client.

The Referee: You may answer. Overruled.

Mr. Fisk: What do you mean—his own witness? You put him on.

The Referee: Do you recall Mr. Walsh's question?

A. I recall it but I don't believe I can answer

(Testimony of Charles W. Ebnother.)

it because his question was if a certified public accounting firm representing Schenley——

Q. Well, I'll put my question this way. Was there any representative of a certified public account firm from San Francisco on the Hedgeside premises with you?

A. I don't recall that there was. I was trying to—Mr. Johnson himself is a certified public accountant but he is a [1259] direct employee of Schenley's.

Q. No, I am speaking about a certified public accountant other than Mr. Johnson.

A. Well, I don't remember any, Mr. Walsh. If you think it was a particular firm and would give me the name, I could tell you very quickly, but I don't recall.

Q. I have reference to a certified public accountant named Johnson, other than the Johnson that testified as a witness here. A. No.

Q. You don't recall him being on the premises examining the books?

A. Johnson? No. Offhand I do not.

Mr. Walsh: No further questions.

The Referee: Mr. Fisk?

#### Re-Cross-Examination

By Mr. Fisk: Q. Do you recall, Mr. Ebnother, which of those seven books of this pile that you have said were in my Buick?

A. No, I do not, Mr. Fisk.



(Testimony of Charles W. Ebnother.)

Q. Do you recall the circumstances under which they got there?

A. I'm not even positive that they were there.

Q. Do you recall turning these seven books over to Mr. Johnson representing the Schenley Company, in this courtroom and permitting him to go into another room and examine them for a period of a half day or more. Do you recall that?

A. No, I do not.

Q. You were not present when he did that?

A. Well, I don't recall it if I was.

Q. I think the record will show that they were turned over, your Honor, in this courtroom for over a half a day. Now, the four or five warehouse receipts that you have referred to that were placed in these books, all you recall is that they were original warehouse receipts, is that right? Strike that. You do recall they were original warehouse receipts?      A.      Yes.

Q. You don't recall the number.

A. I do not.

Q. Or the date.      A. No.

Q. Or the books involved?      A. No.

Q. Or the books that they went in?

A. No.

Q. Were there any on the occasion when Mr. Johnson of the Schenley Company went up and examined these warehouse receipts? Were you with him the entire time that he was examining these books?

A. Yes, practically the entire time. Might be for

(Testimony of Charles W. Ebnother.)

a minute or two I stepped out in the other room or something like that, but practically with him the entire time.

Q. Now, were there any documents replaced in the books at that time by anyone?

A. Well, to re-state the thing in my words, Mr. Fisk, there have been no material changes in those books at any time that I know of.

Q. That isn't my question. Would you read the question back to him, Miss Reporter? [1261]

(The last question was read by the Reporter.)

A. I don't know.

Q. At that time, did you permit Mr. Johnson to go through any of the files of the bankrupt at that time? A. No.

The Referee: What is the answer, Mr. Ebnother?

The Witness: No.

Mr. Fisk: I think that's all.

By the Referee: Q. Mr. Ebnother, in answer to a question by Mr. Walsh, you said that the first time that Mr. Johnson went to the Hedgeside plant at Napa, you sat on one side of the table and called out the warehouse receipt information and he sat on the other side and made his notes, is that correct? A. That's correct.

Q. I don't believe you finished. Was there another time that he went up there to examine other than you said the first time he went there?

A. Well, he was there several times during the course of time. The first time was when he went up

(Testimony of Charles W. Ebnother.)

there in response to the—that is, in compliance with your permission to make an audit of what was in the warehouse and this work was done in connection with that.

Q. Now, did he go up there and meet with you at any other time with reference to the warehouse receipts or warehouse receipt books when you permitted him to get other information—just [1262] pertaining to the warehouse receipt books?

A. I would say no.

Q. And you also stated that there had been no material changes and when you located the loose warehouse receipts, you didn't consider that they were important, is that right?

A. That's correct.

Q. What led you to that conclusion?

A. Well, there have been missing from the receipt books and from the files, so far as we have been able to tell, a large number of receipts. Presumably, they're cancelled because they have never turned up in the hands of anybody else as a claimant but we do not have the originals back.

Q. Now, when you located these few warehouse receipts, you stated that you didn't consider that they were important. Now, how did you arrive at that conclusion?

A. I think I can answer that in this way, your Honor. They did not apply to any of the receipts claimed by Schenley or any other outside concern, nor did they apply to material which Hedgeside itself owned which was not pledged.

(Testimony of Charles W. Ebnother.)

Q. You know that now? A. Yes.

Q. And you knew it then.

A. And I knew it then.

Q. Did they apply to the Anglo Bank as far as anything on their face is concerned regardless of other information that you don't know about—just as far as the face of the receipt?

A. I don't believe they did. I don't believe they did.

The Referee: Anything further, gentlemen?

Mr. Fisk: No.

Mr. Walsh: No further questions, your Honor.

The Referee: Thank you, Mr. Ebnother. Subject to your previous qualification, Mr. La Shelle, can I tell Mr. Ebnother he is in the clear?

Mr. La Shelle: Yes, sir, and except that I haven't left any loose strings that I will need to button up.

The Referee: As far as the respondents are concerned, they still reserve the right to call him as their own witness, should they desire. Thank you, Mr. Ebnother. \* \* \* \* \* [1264]

### ELOUISE JONES

recalled as a witness by the Petitioner, having been previously sworn, testified further as follows:

#### Direct Examination

By Mr. La Shelle: Q. Miss Jones, referring to these two exhibits, numbers 64 and 65 and the contents thereof, you are familiar with these, are you? A. Yes, sir.

(Testimony of Elouise Jones.)

Q. Did you find those?           A. Yes, I did.

Q. Where did you find them?

A. 900 Battery Street.

Q. Whereabouts—What is 900 Battery Street—what premises?

A. That is the whiskey production plant of Schenley Distillers—Schenley itself.

Q. And whereabouts did you find those?

A. In the basement.

Q. I don't mean what part of the building—what part of the company? [1281]

A. The plant manager's office had various files stored there.

Q. What I mean is what part—sales, advertising—

A. Production.

Q. Now, referring to these various drafts appearing in both files, have you reviewed those generally?

A. Yes.

Q. And are those the drafts which you picked up along with the other documents from the Anglo Bank that you testified about the other day?

A. They are.

Q. And with reference to these other printed forms here that there are throughout the two folders of the exhibits in question, one is a printed form called "Request for Check" which has typing on it, the other one is what appears to be a mimeographed form under the title or caption "Schenley Affiliates, To All Concerned, from W. E. Manheim," are the first two top writings on it for the purpose of identification and they have

(Testimony of Elouise Jones.)

various typings filled in. Did you prepare those two documents? A. I did.

Mr. Fisk: Your Honor, there are two voluminous documents counsel has just shown me and as the Court knows, I have made a casual glance through them. If he is going to examine this witness on each of these documents, I submit that I am entitled to review the entire file in detail before he goes through so that we can make objections to the questions to the witness.

Mr. La Shelle: She stated she reviewed that generally, [1282] that she prepared a request and I am asking her if those are the documents which she prepared and she said yes.

The Referee: We will have a recess.

Mr. La Shelle: The rest of it is cross-examination.

The Referee: Just a minute, we will have a recess for ten minutes and during the recess, Mr. Fisk will have an opportunity to examine the two exhibits that have been marked for identification and then when you carry on with your examination after that, Mr. Fisk will have an opportunity to make whatever objections he thinks will apply. Is that what you are asking for?

Mr. Fisk: That's right. I think counsel is entitled to look at a document before a witness is interrogated on it.

(A ten-minute recess was taken.)

Mr. La Shelle: I have no more questions.

The Referee: Mr. La Shelle, did I understand

(Testimony of Elouise Jones.)

you correctly? What was that statement? Did you say you have no more questions?

Mr. La Shelle: Of this witness, no.

(Discussion off the record.)

### Cross-Examination

(The last question and answer were read by the Reporter.)

By Mr. Fisk: Q. Miss Jones, what did you say that were in Schenley [1283] at the present time? A. Cashier. At the present time?

Q. Yes.

A. I didn't state before. At the time that these were made I told the Court.

Q. But what department are you in at present?

A. At the present time I am secretary to the general sales manager of the Roma Wine Division.

Q. Now, how long have you been with the Roma Wine Division?

A. Since a year ago last September.

Q. That was September, '48? A. Yes.

Q. With the Roma Wine Division, is that right?

A. That's right.

Q. Now, immediately prior to September, '48, where were you?

A. I was assistant to Mr. Manheim, who was head of the cashier, contract and disbursement departments and he was office manager. I was his assistant.

Q. And how long were you Mr. Manheim's assistant? A. About two years.

(Testimony of Elouise Jones.)

Q. So that from September, '46 to September, '48, you were in the cashier contract department as assistant to Mr. Manheim. A. Yes.

Q. Since September, '48, you have been with the Roma Wine Division at Fresno.

A. No, in San Francisco.

Q. In San Francisco. Now, I believe that you stated in your direct testimony that you personally located these documents [1284] in Petitioner's 64 and 65 for Identification, is that right?

A. Yes.

Q. Now, when did you locate those documents?

A. I guess it was yesterday morning—Wednesday morning. Wait a minute. Were we here Monday?

Mr. Johnson: Tuesday morning.

The Witness: It was Tuesday morning.

The Referee: Just a minute, Mr. Fisk, so we will be in the clear.

The Witness: It was the morning after—

The Referee: Elouise Jones was sworn and examined on March 27, which was Monday of this week.

The Witness: Yes. I located them March 28.

The Referee: When?

The Witness: March 28 I located them.

The Referee: Which was Tuesday.

The Witness: Yes.

Q. Tuesday morning. In other words, you were in the courtroom here on Monday, March 27.

A. Yes.



(Testimony of Elouise Jones.)

Q. And the next morning you located these documents, is that right? A. Yes.

Q. Do you remember about what time?

A. Oh, it was between 10 and 11 — probably around 10:30.

Q. Tuesday morning.

A. Yes.

Q. What time did you go to work Tuesday morning? A. Nine. [1285]

Q. Nine o'clock?

A. (Witness nods affirmatively.)

Q. Now——

The Referee: Pardon me, when you say—I don't know the materiality, but when you say going to work, that's the time that you arrive at your work.

The Witness: Yes, nine o'clock.

Q. Were you in the courtroom here Monday afternoon? A. Yes, sir.

Q. And you heard Mr. Johnson testify?

A. Yes, sir.

Q. You heard his testimony with respect to his inability to locate these sight drafts?

A. Yes, sir.

Q. Now, from that time until Tuesday morning at 10:30 when you located these documents, did you discuss the matter further with Mr. Johnson?

A. Yes.

Q. When did you first discuss the matter with him after you left the courtroom on Monday afternoon?

A. On the way back to San Francisco.

(Testimony of Elouise Jones.)

Q. Well, now, did he ask you to look for these documents at that time?

A. He said that we would meet at Battery Street the next morning. However, it was impossible for him to be there, and both of us were going to do it, so his assistant was there with me.

Q. Did he give you any ideas of how you should go about looking for any of these documents?

A. After we left here, we went to Battery Street and saw Mr. J. B. Donnelly, who is head of all production and we received permission from him to go into his personal files, which are open only to his secretary and himself. So——

Q. Excuse me.

A. (Continuing) So he gave us that permission.

Q. Mr. Donnelly.

A. Yes.

Q. And these documents you located on Tuesday morning at 10:30 in Mr. Donnelly's personal files. A. That's right.

Q. Now, did Mr. Johnson suggest you go to Mr. Donnelly for the purpose of locating these files?

A. Yes, that was one of the places we were going to start.

Q. Well, did he suggest that?

A. He suggested it, yes.

Q. And when did he suggest it first?

A. On the way to San Francisco.

Q. Monday afternoon. Now, is that the first time that Mr. Johnson ever mentioned the subject of these documents to you? A. No.

(Testimony of Elouise Jones.)

Q. When did he first bring that subject up to you?

A. I really don't remember, it's been so many and so long ago—so many times and so long ago.

Q. Well, can you tell—

A. No, I think it was probably when this court first went in session. I'm not sure. I couldn't be certain of anything. [1287]

By the Referee: Q. Pardon me, Miss Jones, when you say "this court first went in session"—

A. When this case.

Q. You mean with reference to the Hedgeside?

A. Yes.

By Mr. Fisk: Q. Do you know when this action commenced with reference to Hedgeside?

A. Well, to the best of my knowledge, I think it was sometime last fall. I couldn't be sure of the date or the month. I know it was before Christmas.

Q. When did Mr. Johnson first come to you and ask you where he might locate these sight drafts?

A. I couldn't give you the exact month on that. I know it was a long time ago.

Q. Then when did he come to you the next time after the first time?

A. I couldn't say. I know it was **many times**.

Q. He came to you many times.

A. Yes.

Q. And what did you do each time in an effort to find these documents?

A. We would discuss it and try to think of vari-

(Testimony of Elouise Jones.)

ous places that there was a possibility that we might find them or he might find them.

Q. You made suggestions to him as to where he might find [1288] them? A. Yes.

Q. Did you make any personal effort yourself to find them? A. No.

Q. You just suggested where they might be.

A. I didn't make any personal effort.

Q. And did you suggest that he possibly could find them in Mr. Donnelly's personal files?

A. I had no knowledge of Mr. Donnelly's personal files.

Q. Now; in the regular course of business of Schenley in this division out here, do you find documents of this kind in Mr. Schenley's personal files?

The Referee: Mr. whose?

Q. Mr. Donnelly's. Is that the regular practice?

A. I find that a very hard question to answer because of circumstances at the time. The reason they were there was because our department had been broken up and divided—the wine and the whiskey division—a year ago last September. There was not a department for the whiskey division here in San Francisco so all of the legal and confidential files went to Mr. Donnelly as there was really no other place for them to go, rather than send them to New York.

Q. And when did you learn that fact first?

A. I have known that all the time.

Q. But you never previously suggested to Mr. Johnson that they might be found there.

(Testimony of Elouise Jones.)

A. We all knew that they were given to him. What he did [1289] with them, we didn't know.

Q. And had you previously, previous to Monday afternoon, suggested to Mr. Johnson that these documents might be found in Mr. Donnelly's personal files? A. Yes, sir.

Q. But you made no effort to look for them there yourself. A. No.

Q. And you don't know what effort he made. A. No.

Q. Did Mr. Johnson, after you suggested that, return to you and say that he had made that investigation and had been unable to find them there?

A. He stated that he had looked at all the files that were made available to him.

Q. When you returned on Monday afternoon, you didn't telephone New York?

A. No, I didn't.

Mr. La Shelle: I might point out that when we returned——

Mr. Fisk: Just a minute, I submit I am entitled to——

The Referee: Mr. La Shelle, I'll permit you to go further. I think we're getting along very well here. Mr. Fisk is just asking the witness what she did and what she didn't do.

Mr. La Shelle: But let's be fair. The New York office is three hours' difference in time.

The Referee: Well, I don't think there is anything about Mr. Fisk's question that couldn't be

(Testimony of Elouise Jones.)

understood by the witness. If there is, why your witness can so [1290] designate.

(The last two questions and answers were read by the Reporter.)

Q. Do you know whether or not Mr. Johnson telephoned New York on Monday evening?

A. I do not know.

Q. Do you know whether or not he telephoned New York on Tuesday morning?

A. I do not know.

Q. He did not discuss that with you.

A. No.

Q. Now, when you located these documents in Mr. Donnelly's personal files, were all of the documents that appear in these two exhibits together?

A. No. Those documents, plus some other documents covering spirits already used which are not in question in the case, they were added to that, but those were all together, plus the others which are not in question.

Q. Well, now, let's take the sight drafts in these documents, in what state were they when you located them in Mr. Donnelly's personal files?

A. They were all just in that same order.

Q. In a file in this same order. A. Yes.

Q. They were not in these two particular folders, were they?

A. Well, what I mean in the same order, the sight draft and the request for check and the notation, those three documents for each set were together. Is that the way you—

(Testimony of Elouise Jones.)

The Referee: Pardon my interruption, Mr. Fisk. Let me see the—this is 65; what is the other one?

Mr. Fisk: 64.

By the Referee: Q. Miss Jones, take a look at the folder marked 64—the documents in 64. When you located the group of documents that are in Petitioner's No. 64 for Identification, were they in that folder that encompasses them now?

A. Not this particular one, no.

Q. Well, were they bound together in any form like they are now?

A. Yes, they were bound together——

Q. I mean, all of the documents that are inside of that folder now, were they bound together, exclusive of the folder, when you found them or when someone else found them?

A. No, they were all bound together in these folders right here (indicating).

Q. What do you mean "right here"?

A. In these folders (indicating). They were in these folders — not with the documents in those folders.

Mr. La Shelle: I might say, I should—I explained to counsel; perhaps I overlooked explaining to you, but these are the folders that were found and remaining in these folders are similar documents, but these cover spirits which have been used and withdrawn from the warehouse and, therefore, are not in question in this case. Since finding them, they took them out and segregated those that have been used but which are still here, and the ones that are in question, which are the exhibits.

(Testimony of Elouise Jones.)

Q. Well, that's what I'm trying to get. So the documents that are in Petitioner's No. 64 and Petitioner's No. 65 for Identification, when they were located, they were in other folders and not in the present form, is that correct, Miss Jones?

A. Yes, correct.

The Referee: You may proceed, Mr. Fisk.

By Mr. Fisk: Q. Did you remove them from the other folders and place them together in those folders or did someone else do that?

A. I did not do it.

Q. Now, how did you go about determining what documents you were looking for? You said you went over and did it alone, didn't you?

A. Well, I had Mr. Donnelly's secretary and Mr. Johnson's assistant go over with me. However, I made the actual identification of them.

Q. Well, now, let's take Petitioner's Exhibit 64 for Identification. Let's take first, the document on top which purports to be a sight draft of the Anglo Bank, dated November 10, 19 something, \$1530.24. How did you know that that was the document you were looking for at that time?

A. I knew because I have worked with the folders for months and months, plus the fact that I recognized my handwriting on the forms.

Q. Well, aren't there similar documents in these other two files that have all of those characteristics?

A. Yes. [1293]

Q. Well, how did you know that this particular document was the one you were looking for?



(Testimony of Elouise Jones.)

Mr. La Shelle: Well, just a moment, I'll object to that question as not proper cross-examination. She stated that when she got them, it was in this folder and that folder and someone else other than her segregated them.

The Referee: Overruled.

Mr. Fisk: I think the witness understands the question all right.

The Referee: Miss Jones, did you understand the question? Would you like to have it read again?

The Witness: I would like to have it read again, please.

(The last question was read by the Reporter.)

A. All of the documents were together and they had been together from the beginning of this deal.

Q. You mean, that all of the sight drafts that were issued by Franciscan and Hedgeside were always kept together in the same file, is that correct?

A. That's right.

Q. Therefore, you simply located the file that you had in mind, is that right?

A. That's right, I located the file and checked to see that the sight drafts were still in it.

Q. But you have no idea which sight drafts are in controversy in this case and which are not, have you?

A. I couldn't tell you if this one was unless I checked with [1294] some schedules.

Q. That's what I say, you don't have enough familiarity——

A. I can't remember.

(Testimony of Elouise Jones.)

Q. Well, have you assembled documents for this case in the past?

A. Not for this case. I only worked with it during the time the contract was in force.

Q. Now, in Petitioner's 64, the second document from the top, under the sight draft, is headed "Request for Check" and that purports to be a copy of an original, does it not? A. Yes.

Q. How many copies are made out when that request for check is made out?

A. I don't remember for sure, but I think there were three or four; I can't be positive.

Q. Did you make them out?

A. Yes, I did.

Q. You typed them yourself? A. Yes.

Q. Now, I notice that copy is not signed. Is the original signed? A. Yes.

Q. And who would sign the original—you or Mr. Manheim?

A. He signed most of them. However, I would sign for him in some cases.

Q. Now, where did the original go?

A. It's probably in the accounts payable department. I don't know.

Q. Well, what was the course of business of Schenley at the [1295] time they were made out? What did you do with the original?

A. I sent the original and the duplicate to Mr. Baglin in the production department.

Q. The original and a duplicate? A. Yes.

(Testimony of Elouise Jones.)

Q. And do you know what Mr. Baglin did with the original?      A. No.

Q. You don't know what the course of business or practice was in that regard.

A. I couldn't say for sure. I have an idea, but I couldn't say for sure.

Q. You don't know whether he filed the original away or not.      A. I don't remember for sure.

Q. What do you do today?

A. I am secretary to the general sales manager—

Q. I mean, what is the practice of the company today with respect to the original?

A. I don't know; I'm not in that division.

Q. Now, the third document in this exhibit, Petitioner's 64, purports to be a mimeographed document, is that right?      A. Yes.

Q. And did you also make that out?

A. Yes.

Q. What are the names down at the bottom?

A. These are names of department heads and interested parties.

Q. How many are there?      A. Eleven.

Q. All of those company employees are officials—were they [1296] at that time?      A. Yes.

Q. Did each one get a copy?      A. Yes.

Q. And who got the original of that document?

A. In most cases, Mr. Abbott is his name, was first on the list.

Q. And where is he located?

A. I don't know.

(Testimony of Elouise Jones.)

Q. Where was he located then?

A. I think part of the time he was located at our Market Street office, but he could have been located at the Battery Street office, too.

Q. Were all of those eleven individuals at that time located in San Francisco? A. No.

Q. Several of them? A. Several.

Q. Several. And they would get copies in New York. A. Yes.

Q. Now, I notice in this mimeographed copy opposite the heading "file" is a column and there is a designation. Can you tell me what that designation is?

A. W-E-M stands for W. E. Manheim; 12-1 stands for the date of preparation; and 710.041 is the file—is my file number.

Q. Now, are either of these two files identifiable by that number?

A. We had so many folders on this one deal which the 710.041 was Hedgeside and Franciscan so I didn't label each one of them [1297] with the file number.

Q. Well, neither of these two files bear that number. A. No, they don't.

Q. Does Schenley have a file that would answer that description or bear that number?

A. I don't think those are any longer in existence. They don't use that filing system any longer.

Q. Now, when you were making out these documents, did you find the original warehouse receipt along with these other two documents?

(Testimony of Elouise Jones.)

A. No, sir.

Q. Strike that out. Did you find the cancelled sight draft along with those two documents?

A. They were always clipped together in this manner.

Q. By you.                   A. Yes.

Q. And filed where?

A. In one of those folders (indicating).

Q. Not filed in a file bearing that number.

A. No.

Q. Then so far as your work is concerned, that file number has no meaning, is that right?

A. Yes, it had meaning. We had another folder which would be correspondence filed. There was a tab on this side. We had another folder of correspondence that had the number on. These were filed behind it.

Q. Well, now, when Mr. Johnson first asked you about where he could locate these documents, did you not advise him that [1298] you had such a file, did you?

A. I advised him the files were in existence to the best of my knowledge, but whether they had been separated or what condition they were in or where they were, I didn't know for sure.

Q. When you made out this document here or request for check, where did you get the information—

A. I got that from the—

Q. Wait just a minute. (Continuing): —where did you get the information to make out that request?

(Testimony of Elouise Jones.)

A. I took that from the duplicate invoice which I obtained from the Anglo Bank.

Q. When you went over there?

A. When they told me that there was a sight draft and I went over and checked the warehouse receipt and the invoices to see that they agreed and checked the amount of the sight draft to the invoices, then took the duplicate invoice back to the office and prepared my request for check from that.

Q. Now, I notice this first request is marked "Approved, by James E. Woolsey." What department was he in at that time?

A. He's in the compliance department.

Q. And before you requested a check, you always had to get his approval, is that right?

A. Not always. I did on the first one—maybe the first two, I don't know. Just right at first I did.

Q. Now then, would you make out the check in payment of the [1299] sight draft?

A. The voucher check was made out by another department after they received the request for check.

Q. Signed by either you or Mr. Manheim.

A. Yes.

Q. So you didn't make out the check.

A. No.

Q. Then you received the check then and went over to the bank with the check, is that right?

A. The voucher check was returned to us for final processing and approval. Then it was signed

(Testimony of Elouise Jones.)

and I took it to the bank to pick up the sight draft and the original invoices and warehouse receipt.

Q. You took the voucher check. Did you take any other papers with you when you returned to the bank except the voucher check, to pick up these papers?

A. I took the duplicate invoice for my own check to see that it was the same as—I was going to pick up the same as I had checked previously.

Q. In the first instance, upon getting notice from the bank, you received a duplicate invoice; then when you went back with the voucher check, you took that duplicate invoice with you.

A. That's right.

Q. And that duplicate invoice, I take it, was always approved by some member of the Schenley organization, is that right?      A. Yes.

Q. Before delivery to the bank.

A. Yes.

Mr. La Shelle: Don't nod your head. Say yes or no, [1300] because the reporter won't get the nod.

Q. Now, did you take any other documents with you to the bank other than the voucher check and the duplicate invoice?      A. No.

Q. Nothing else. And you went to the bank, then you handed them the voucher check and you received what?

A. I received the cancelled sight draft, the original invoice and the warehouse receipts.

Q. That's all.

A. Receipt or receipts.

(Testimony of Elouise Jones.)

Q. I didn't get the last three words.

A. Sometimes there was only one warehouse receipt; sometimes there were many.

Q. Oh. So you delivered your check to the bank, your voucher check to the bank and you received cancelled sight draft, the original invoice, the warehouse receipt, and did you receive anything else?

The Referee: She said receipt or receipts.

Q. Yes, the warehouse receipt or warehouse receipts.      A. That's right.

Q. And that's all?      A. That's all.

Q. You gave them no verbal instructions of any kind or character.      A. No.

Mr. La Shelle: By "them," you mean the bank?

Mr. Fisk: That's right.

The Witness: No.

Q. The information that appears on the voucher check was [1301] obtained from you, that is, from your request for check, was it not?

A. That's right.

Q. And you, in turn, received it from the copy of the invoice.      A. That's correct.

Q. In connection with the taking up of these sight draft transactions from the Anglo Bank that you have been testifying about, was there any other investigation of any kind made by Schenley in determining whether or not you would deliver a check against this sight draft?

Mr. La Shelle: Just a moment, your Honor, we will object to the form of that question because it's



(Testimony of Elouise Jones.)

obviously asking her for information beyond her knowledge.

Mr. Fisk: Well, what you know of.

Mr. La Shelle: She can say what she sid.

Q. Was there any other investigation that you know?

The Referee: That she knows of. You may answer—that you know of.

A. Not that I know of.

Q. I notice that some of these sight drafts have a rubber stamp number on them. Do you know what that number is?

A. No, I don't know.

Q. For example, in the third sight draft in this Petitioner's 64, which is dated November—

Mr. La Shelle: Give the amount of it.

Q. Which is dated November 13 (and I can't see the year number)— [1302]

Mr. La Shelle: It would have to be 1947.

Mr. Fisk: I'll handle it. You correct me if I do wrong.

Mr. La Shelle: It says 1947 there on the cancelled—

Mr. Fisk: It isn't dated so you can see it, though. You can't tell the year date, but it's probably 1947.

Q. The amount of it is \$676.06 and it's marked "paid November 18, 1947." Now, there is a rubber stamp number on the sight draft—No. 84264. I ask you if you know what that number is?

Mr. La Shelle: We will object to the form of that question as including counsel's conclusion that it's a rubber stamp number.

(Testimony of Elouise Jones.)

The Referee: You may answer, Miss Jones. Overruled. A. I do not know.

Mr. Fisk: The record speaks for itself. If I am wrong, it will probe it better than you can.

Mr. La Shelle: I am catching your tactics like a fellow does the measles.

Mr. Fisk: I wouldn't say you were doing quite as fast as that.

Mr. La Shelle: No, I just have German measles.

Q. You don't know who put the stamp on there?

A. I don't know, no.

Q. It means nothing.

A. It means nothing to me. [1303]

Q. Miss Jones, I notice in reviewing some of these requests for checks in this exhibit 64, there appears on there "approved by W. Del Tredici." Was it your practice to obtain his approval before giving out a check throughout the period in which some of these sight drafts were taken up?

A. It was imperative that Mr. Del Tredici approve—have his signature on the invoices before they were paid.

Q. And you have just copied that statement off.

A. That's right.

Q. I want to show you Petitioner's 51, Invoice No. 197, dated November 10, 1947—

Mr. La Shelle: Is that your copy, Mr. Fisk?

Mr. Fisk: Yes.

Mr. La Shelle: I prefer you use the Court's copy.

Mr. Fisk: All right. You furnish me with it.

(Testimony of Elouise Jones.)

Q. (Continuing): Invoice No. 197, dated November 10, '47 on the invoice of Franciscan Farm & Livestock Co., can you recall whether or not you took up the sight draft covering that particular invoice?

A. I cannot recall for sure.

Q. Looking at Petitioner's Exhibit 64, the top sight draft can you tell me whether or not that refreshes your recollection as to whether or not you ever saw that invoice?

A. I think probably I did.

Q. On the request for check in Petitioner's 64 under this sight draft, there is in pencil figures 197. Is that your handwriting?

A. Yes, it is. That's what makes me think that— [1304]

The Referee: I didn't hear the last of your answer.

A. (Continuing): Yes, it is. That is why I think probably I did see it.

Q. And what is the number of this invoice I have asked you about?      A. 197.

Q. So you probably did see the original of this invoice.      A. Yes.

Q. This is a photostat of it, is that right?

A. Yes.

Q. Now, on the invoice 197, down at the bottom, there appears a statement, "43 Schenley barrels, warehouse receipt, Mountain View No. 49 S-D through Anglo California National Bank, San Francisco, California; this account is assigned to Hedge-

(Testimony of Elouise Jones.)

side Distillery Corp. for collection; copies of this invoice in duplicate to Mr. Baglin." Can you say whether or not that was typewritten on the invoice at the time you saw it in the hands of the bank?

A. I can't say for sure that this was. I know there was some typing on most of them or some of them but I can't say whether it was exactly the same typing.

Q. Before issuing a check or request for check, would you consult Mr. Baglin?

A. No, not before issuing a request for check.

Q. That was not your practice in connection with these transactions.

A. No. As soon as I made up the request for check, I sent [1305] it to Mr. Baglin for his approval.

Q. Would the typewritten statement that I have just read in any way influence or affect you in making out your request for check?

A. I don't recall whether it did or not.

Q. Well, would it be your best recollection that it did or that it did not?

A. I can't answer that because I don't remember whether this was on all of the checks or not.

Q. You mean on all of the invoices.

A. Invoices, yes.

Q. At any rate, at the present time you have no recollection of any influence it had upon you in making out the request for check.

A. We had this procedure——

Mr. La Shelle: Just answer the question.

(Testimony of Elouise Jones.)

A. I can't answer—or I would like to have you read it. Would you read the question again?

(The last question was read by the Reporter.)

A. I don't think so.

Q. Now, I'm still referring to Petitioner's 51 in Evidence and the group of papers in that exhibit attached to the warehouse receipt, or the invoice just referred to, that is, Franciscan's invoice No. 197 and I show you what purports to be warehouse receipt of Hedgeside Distiller No. 3674-B, dated December 8, 1948, and ask you if you recall receiving that warehouse receipt when you took up the sight draft of November [1306] 10, 1947, included in Petitioner's 64. I might say, Miss Jones, out of fairness to you, the date of that warehouse receipt is December 8, 1948; that is the date shown on the receipt itself.

A. Did I understand the question correctly that this——

Mr. Fisk: Read it back.

(The last question was read by the Reporter.)

A. I couldn't say for sure.

Q. Well, now, looking again at Petitioner's 64 and the mimeographed sheet that accompanies the sight draft of November 10, 1947, does that refresh your recollection as to whether or not you received the Hedgeside Distillery Warehouse Receipt 3674-B at the time you took up that sight draft?

A. As shown here, I didn't.

The Referee: What is that, Miss Jones?

(Testimony of Elouise Jones.)

A. As shown here, it clearly states warehouse receipt No. 49; he has warehouse receipt 3674.

The Referee: Well, what was your answer before? You said as shown here it clearly what?

The Witness: I said it clearly shows that they don't work together.

Q. In other words, from your records, you would say that you did not receive this warehouse receipt 3674-B when you took up that sight draft.

A. Not right at the same time.

Q. Well, do you have any recollection of ever receiving this warehouse receipt 3674-B—you personally? [1307]

A. Not offhand. I would have to look at some records.

The Referee: What was that again?

The Witness: Not offhand.

The Referee: And what was the last part of your answer?

The Witness: I would have to look at some of the records of schedules.

Q. Now, do you have any recollection of receiving, at the time of taking up that sight draft, warehouse receipt No. 49, Franciscan Farm & Livestock Co.?

A. This sight draft dated November 10 covered warehouse receipt No. 49 dated November 10, 1947, Franciscan Farm & Livestock.

Q. Now, then, if you received that warehouse receipt—you did receive a warehouse receipt at the time you paid your check to the bank and took over

(Testimony of Elouise Jones.)

that sight draft, did you not?           A. Yes.

Q. Now, what did you do with the warehouse receipt when you went back to Schenley's offices?

A. I put it in a safe—locked safe.

Q. And then was it your practice at that time to just hold that warehouse receipt there?

A. Yes.

Q. And did you hold it ad infinitum or what did you finally do with it?

A. I held them until I received instructions to release them to designated people. [1308]

Q. And do you have any recollection as to what instructions you received with this warehouse receipt 49 of Franciscan?           A. No.

Q. Do you have any recollection what you did with any of the warehouse receipts received in payment of the sight drafts appearing in that exhibit, Petitioner's 64?

A. Some of them were released to Mr. Peck of our company.

Q. And what is his title and where is he located?

A. I don't remember what his title is or was but he's located at 900 Battery Street.

Q. In other words, you physically delivered some of these warehouse receipts to Mr. Peck?

A. They were transmitted to him.

Q. Well, by transmitted, you are distinguishing from personal delivery by you, is that right?

A. That's right.

Q. And you don't know what he did with them, I take it?           A. No.

(Testimony of Elouise Jones.)

Q. You have never seen them since that time.

A. No.

Q. When you went over with your check and delivered it to the bank in payment of the sight draft, did you make any examination of the warehouse receipt that they had there? A. I did.

Q. What examination did you make?

A. I checked to see that the serial numbers, gallonage and date were in accordance with the invoice which we were paying, or [1309] invoices which we were paying.

Mr. Fisk: That's all.

The Referee: Mr. Walsh?

Mr. Walsh: No questions, your Honor.

The Referee: Mr. La Shelle?

Mr. La Shelle: Yes, I just have a couple of questions.

#### Redirect Examination

By Mr. La Shelle: Q. Did any of the invoices that you remember picking up come through without Mr. Del Tredici's written approval on them?

A. Yes.

Q. When that happened, what would you do?

A. I would go through the same procedure with the exception that payment would be withheld until written approval was received from Mr. Del Tredici.

Q. Now, with reference to the warehouse receipts, as distinguished from invoices and drafts which you picked up during this period of time,



(Testimony of Elouise Jones.)

were they all Hedgeside warehouse receipts or were they some other receipts?

A. They were both Hedgeside and Mountain View receipts.

Q. And with reference to this invoice that counsel was asking you about where it says 43 Schenley barrels, warehouse receipt, Mountain View No. 49, checking that against the warehouse receipt of Hedgeside, does that refresh your recollection as to whether Mountain View or Hedgeside received a copy of that invoice?

A. Mountain View did receive——

Mr. Fisk: She said she didn't; if she wants to change [1310] her testimony——

Mr. La Shelle: Let's be fair to this witness. It's already in this case that originally, Mountain View receipts were issued and later substituted by Hedgeside. That's not cross-examination. It's trying to trick a witness; that's what it is.

Mr. Fisk: Don't worry about me tricking a witness when you are standing here to testify for me.

Mr. La Shelle: You will try, but you won't.

The Referee: Will you read Mr. La Shelle's question and afford the respondents an opportunity to make an objection?

Mr. La Shelle: That's all the questions I have. I have no further questions.

(The last question was read by the Reporter.)

Mr. Fisk: The record will show what——

The Witness: She read it back as invoice. Did you say invoice or receipt?

(Testimony of Elouise Jones.)

Mr. La Shelle: Receipt.

The Referee: What is your statement, for my benefit? I mean, so the record will be straight with reference to receipts, invoices and so forth—the way the court reporter read it back, is that the way you would like it to appear in the record?

The Witness: Well, she said one thing and I thought he had said another. [1311]

The Referee: The only way I want is the way you are answering it.

The Witness: She said invoice and I thought he said receipt.

The Referee: Well, then, you now tell the court reporter the way you want your answer to go into the record.

Mr. La Shelle: She is not referring to the answer; she is referring to something I said.

The Witness: It wasn't my answer; it was the way she read back what he said.

The Referee: The only way she——

The Witness: I understood him to say receipt and she read it back invoice.

The Referee: And Mr. La Shelle, what did you say?

Mr. La Shelle: Receipt.

The Witness: That's the way my answer was.

The Referee (To the Reporter): You will make the correction to receipt.

Mr. Fisk: What is the witness's answer? I don't know what the question is or the answer.

(Testimony of Elouise Jones.)

The Referee: Mr. La Shelle said that he was satisfied and the Court, in the face of your comments and the Court's state of mind, the Court is not satisfied.

Mr. La Shelle: There is a question and there is an answer. There is no motion or no objection. There is [1312] nothing except discussion of counsel.

The Referee: That's the reason the Court has not made any ruling; it was merely a comment.

Mr. Fisk: May I have the question and the answer read as it now is in the record?

(The Reporter read the last question and answer and discussion of counsel following.)

The Referee: So now we are back to Mr. La Shelle's original question.

Mr. Fisk: I take it we are through.

(Discussion off the record.)

#### Recross-Examination

By Mr. Fisk: Q. Miss Jones, will you look at the Franciscan invoice No. 197 dated November 10, 1947?

Mr. La Shelle: Will you talk a little louder, Mr. Fisk, so we can hear you?

Q. Will you look at Franciscan invoice No. 197 dated November 10, 1947 and tell me whether or not there is anything in that invoice that refreshes your recollection as to what warehouse receipt you received when you took up the sight draft accompanying that invoice?

The Referee: Is there an exhibit—

(Testimony of Elouise Jones.)

Q. Is there anything in that document that refreshes your recollection as to what warehouse receipt you received? Not what some other document refreshes your recollection, but is there anything in that document that refreshes your recollection?

Mr. La Shelle: Before you answer, I ask you to read the entire document. Don't just glance at it; read it.

A. Warehouse receipt, Mountain View No. 49 was attached to invoice No. 197, dated November 10, 1947.

Mr. La Shelle: Well, is your recollection refreshed now from looking at that document as to what warehouse receipt, if any, you received?

Q. When you took up that invoice and sight draft.

A. At the time that I took up the sight draft, warehouse receipt No. 49, Mountain View, accompanied it.

Q. You took that warehouse receipt back to Schenley's offices and held it awhile and then turned it over to Mr. Peck, is that right?

A. I don't remember whether I turned it over to Mr. Peck or not.

Q. If you did not turn it over to Mr. Peck, whom would you have turned it over to?

A. It stayed there and was still there when I left and was transferred to another department.

Q. And as far as you know, it's still there.

A. I know it isn't there, but I don't know what happened to it.

(Testimony of Elouise Jones.)

Q. You know that it isn't there now.

A. No, because there is no office—there is no department.

Q. And you just don't know where the document is. [1314]

A. That's right, I don't know.

Mr. Fisk: That's all.

The Referee: Mr. Walsh?

Mr. Walsh: No questions.

The Referee: Mr. La Shelle?

Mr. La Shelle: No questions.

The Referee: May Miss Jones be excused now? Thank you very much, Miss Jones.

(An adjournment was taken until Wednesday, April 26, at 10:00 a.m.)

\* \* \* \* \* [1315]

### EUGENE BRANSTETTER

called as a witness on behalf of Petitioner, being first duly sworn by the Referee, testified as follows:

By the Referee: Q. Your full name?

A. Eugene Branstetter.

Q. How do you spell the last name?

A. B-r-a-n-s-t-e-t-t-e-r.

### Direct Examination

By Mr. Ward: Q. What is your position, Mr. Branstetter?

A. Liquor control officer of the State of California.

Q. And what is your district?

(Testimony of Eugene Branstetter.)

A. Napa County.

Q. Napa County?

A. (Witness nods affirmatively.)

Q. And were you in the same job in 1949?

A. I was.

Q. Did you have occasion to visit the Hedgeside Distillery office in May of 1949?      A. I did.

Q. And what was the purpose of that visit?

A. May 25 of 1949 I went out and picked up the licenses—state licenses issued to the Hedgeside plant at that time. [1339]

Q. Were you instructed to go there to pick them up?      A. I was.

Q. And from whom did those instructions come?

A. Mr. Patterson in Woodland.

Q. And what was his position?

A. He was the liquor administrator of the 14th District.

Q. I show you Petitioner's Exhibit No. 60 for Identification which purports to be a license from the State of California on which the words "Public Warehouse License" are typed. Do you have any way of identifying this license as one of those you picked up?

A. Yes, by the number E95D, File No. 17400.

Q. And at the time you picked up that license, did you make a note of the license number and the serial number?      A. Yes.

Q. And is that the method you were able to identify them now from those notes?

A. That's right.

(Testimony of Eugene Branstetter.)

Q. I show you Petitioner's Exhibit No. 61 for Identification, purporting to be a license issued by the State of California upon which is marked or is typed "Distilled Spirits Manufacturer's License". Can you identify this as a license you picked up on May 25, 1949?

A. Yes, that is one of them, K-23-D, Distilled Spirits Manufacturer's License, File 17400.

Q. And are those numbers the means by which you can identify this as a license you did pick up that day? [1340]

A. That's right.

Q. Do you recall where the licenses were when you picked them up physically?

A. In a—they were on a board on the wall, just inside the door.

Q. And did you take them off the board?

A. Yes.

Q. And what disposition did you make of these two licenses after you took them away?

A. Sent them to Mr. Patterson in Woodland.

Mr. Ward: Now, your Honor, we offer in evidence, Petitioner's Exhibit No. 60 and Petitioner's Exhibit No. 61.

Mr. La Shelle: We have to return those, so we would like to substitute photostats, your Honor.

The Referee: Formerly 60 for Identification, becomes 60 in Evidence.

Mr. Fisk: On behalf of the Bank, I make an objection that they are irrelevant, incompetent and immaterial, which was the objection I made before. These are the documents that I told counsel he

(Testimony of Eugene Branstetter.)

need not, as far as I was concerned, produce a witness to authenticate them, so I am making the same objection as to the introduction. One of them purports to be a State of California distilled spirits manufacturer's license of Hedgeside, and the other a State of California public [1341] warehouse license of Hedgeside.

The Referee: Mr. Walsh?

Mr. Walsh: I objected to these before, if your Honor please, and I raise the same objection, they are not material.

The Referee: The objection is overruled—60 becomes 60 in Evidence; 61 becomes 61 in Evidence.

#### Cross-Examination

By Mr. Fisk: Q. Mr. Branstetter, is that correct? A. That's right.

Q. Whom did you see at Hedgeside when you picked up these two licenses?

A. Mr. Logan and Mr. Soule—S-o-u-l-e, I believe his name is spelled.

Q. Mr. Logan and Mr. Soule. And did you obtain their permission to remove these documents or did you just take them without their permission?

A. I had an order to remove those documents.

Q. And you took them, regardless of their approval, is that right? A. That's right.

Q. These licenses had not expired at that time, had they? A. No, sir.

Q. In other words, tell me the occasion for removing them from the premises of Hedgeside.



(Testimony of Eugene Branstetter.)

A. I had an order of suspension for those licenses.

Q. That is, an order of the State Board of Equalization? [1342]      A. That's right.

Q. Of the State of California.

A. That's correct.

Q. You are a representative of the State Board of Equalization, are you not?

A. That's right.

Q. For the State of California?

A. That's right.

Q. You have nothing whatsoever to do with any other state organization.

A. (Witness nods affirmatively.)

Q. And your duties are solely with the Alcohol Beverage Control exercised by the State Board of Equalization for California?

A. That's correct.

Q. Was the order of suspension a written order that you referred to?

A. Printed form that's filled in.

Q. Did you present that order to Mr. Logan or Mr. Soule?

A. I did. I tacked the order up on the board where I took the licenses from—the notice of suspension.

Q. Well, then, so far as you know, a copy of that order should be in the possession of Hedgeside, is that right?

A. A copy of that order was served on Hedgeside and put up in place of the licenses.

(Testimony of Eugene Branstetter.)

Q. And left with them? A. Left there.

Q. You did nothing, did you, that is, you personally had nothing to do with the issuance of these licenses? [1343] A. No.

Q. Did you have anything to do with the issuance of the order of suspension?

A. No, sir, not the issuance of it. I merely served it.

Q. Did you make any check on the situation as it existed at Hedgeside in connection with the issuance of that order?

A. In what way do you mean?

Q. Well, strike that out. Do you know the factual basis for the issuance of that order of suspension? A. Yes.

Q. What was it?

A. Non-payment of taxes—excise taxes.

Q. Non-payment of excise taxes to the—

A. State.

Q. What do you mean—the liquor control board of the state?

A. To the Board of Equalization.

Q. The State Board of Equalization.

A. That's right.

Q. And what is the particular act under which you operate?

A. The Alcohol Beverage Control Act.

Q. The Alcohol Beverage Control Act of the State of California. A. That's right.

Q. And due to the fact that Hedgeside had failed to pay the current taxes due under these licenses,

(Testimony of Eugene Branstetter.)

an order of suspension was issued and the licenses removed from the premises by you, is that right?

A. That's right. [1344]

Q. Since removing these licenses, have you returned to the premises of Hedgeside?

A. I have been out there, yes.

Q. Have you made any effort to determine what their activities and operations have been since these licenses were suspended?

A. No, I haven't.

The Referee: What is the answer?

The Witness: No.

Q. The State Board of Equalization is not in any sense concerned with that, is that correct?

A. As far as I know.

Mr. Fisk: Yes. That's all.

The Referee: Mr. Walsh.

### Cross-Examination

By Mr. Walsh: Q. Mr. Branstetter, was there any demand made upon the Hedgeside Distillery for the taxes before the order of suspension was issued?

A. As to that I couldn't say right now.

Q. Well, is it customary for the department to take these licenses without notifying or making a demand upon the particular licensee to pay the delinquent taxes?

A. There is a section of the act that at any time they feel that they are in jeopardy, that they can summarily suspend those licenses.

Q. Isn't it a fact that they suspended those li-

(Testimony of Eugene Branstetter.)

censes because they knew an involuntary petition in bankruptcy was [1345] filed against the Hedgeside Distillery?

A. That order that I had was a non-payment.

Q. Well, did you know yourself that an involuntary petition in bankruptcy had been filed against the Hedgeside Distillery? A. I did.

Q. Did you know that at the time that you took the licenses?

A. Yes. Yes, I had notified my superiors of it.

Q. You had notified them. A. Yes, sir.

Q. And isn't it a fact that you notified them, that's when the order of suspension was issued?

A. It was issued for non-payment.

Q. Yes, but it was issued after you notified your superiors that the involuntary petition had been filed against Hedgeside Distillery. A. Yes.

Q. What is your answer?

A. Yes, it was afterwards.

Q. And when you were on the premises of the Hedgeside Distillery on May 23, you knew that an involuntary petition in bankruptcy had been filed.

A. Yes.

Q. And you stated that you knew that before and you notified your superiors.

A. I had notified my superiors that there was a bankruptcy proceedings; whether it was involuntary or voluntary, now I couldn't say.

Q. When did you notify them, if you remember?

A. It was sometime around this time. Now, just exactly [1346] when, I couldn't say.

Q. What do you mean "around this time"?

(Testimony of Eugene Branstetter.)

A. Around the time that I picked up these licenses.

Q. How did you notify your superiors—in writing or by telephone?

A. Offhand I couldn't say.

Q. You don't remember.

A. I don't remember.

Q. But anyway you knew, when you took the licenses, that there was a petition in bankruptcy filed against Hedgeside Distillery.

A. Yes.

Q. Did you have any order of any United States District Court to go upon the premises and take these licenses?

A. No.

Q. You didn't, did you?

A. No.

Mr. Walsh: No further questions.

Mr. Fisk: May I ask just one other question, if the Court please?

Cross-Examination—(Continued)

By Mr. Fisk: Q. Mr. Branstetter, preliminary to issuing these licenses by the State of California, was any determination made whether or not any of the pertinent federal laws were complied with?

Mr. Ward: We object to that. I can't see that that is proper cross-examination as to the federal laws.

The Referee: Overruled. You may answer.

The Witness: Please repeat that question?

(The last question was read by the Reporter.)

A. Previous to the issuance of these licenses, I wouldn't have any knowledge of it.

(Testimony of Eugene Branstetter.)

Q. I don't believe you understand my question. I'll reframe the question this way. Mr. Branstetter, as a condition of issuing these licenses, does the Board make a determination as to whether or not the licensee has complied with the pertinent federal laws?

Mr. Ward: Well, I object to that, your Honor, as calling for the witness's conclusion, depending on what the statutes of the state provide—

Mr. Fisk: I am referring to practice, your Honor.

The Referee: Overruled. You may answer.

A. Some types of licenses it is and—we do make an investigation of whether there is a basic—what we call a basic permit from the Internal Revenue Department. Other types of licenses we do not question.

Q. Well, this type of license here, do you make that determination?

A. That type of license? Right at this time, I couldn't tell you. I'd have to start to check up in the book and find out whether it's necessary on that. In the winery license, we do.

Q. But you can't say with respect to—

A. I couldn't say right now, no.

Q. Well, is such a determination made with respect to compliance with other California state licenses? [1348]      A. No.

Mr. Fisk: That's all.

The Referee: Mr. Ward?

Mr. Ward: No further questions. \* \* \* \* \* [1349]

HELEN HUSTED

called as a witness on behalf of the Petitioner, being first duly sworn by the Referee, testified as follows:

By the Referee: Q. Your name?

A. Mrs. Helen Husted, H-u-s-t-e-d.

Q. Mrs. Helen Husted, H-u-s-t-e-d. And where do you reside, Mrs. Husted?

A. 111 Stonecrest Drive, Napa, California.

Q. Where? A. Napa.

Q. Stonecrest Drive, Napa.

A. Yes, sir.

Q. And by whom are you employed?

A. No one at present.

Q. Unemployed. A. Right, sir.

The Referee: Very well, Mr. Ward or Mr. La Shelle.

Direct Examination

By Mr. La Shelle: Q. Mrs. Husted, between the years approximately '45 and '49, by whom were you employed? A. Hedgeside Distillery.

Q. And when did you start your employment and approximately what month and what year?

A. In May, 1945. [1455]

Q. And when did you terminate your employment there?

A. As of the close of business on March 31, 1949.

Q. And during that period with the exception of vacations, holidays and weekends and so forth, you were employed continuously?

A. Yes, sir.

Q. And during that period of time, were you

(Testimony of Helen Husted.)

employed by anyone else? A. Yes, sir.

Q. And whom?

A. Franciscan Farm & Livestock Company.

The Referee: I didn't hear that. What period were you employed by Franciscan?

A. The same period, with the exception—no, I better change that a little bit—to March 15, 1949 for Franciscan. You see, there's a fifteen-day differential there. I better put that in.

Q. And which one of those (I'll call them Hedgeside and Franciscan to make it shorter)—at which did you spend most of your time.

A. Hedgeside.

Q. And what was your general classification as an employee?

A. Well, I was the only stenographer, the only girl in the office during that period who was a stenographer as such and it included general stenographic and clerical duties.

Q. I take it, you were the only one that did shorthand. A. That's right.

Q. And during that period, among other duties, did you have charge of the warehouse receipt books for the IRBW No. 2 [1456] at Hedgeside?

A. I made out the warehouse receipt books—rather, the warehouse receipts on instructions and kept them in their file as such.

Q. I'll show you two groups of warehouse receipt books here, Mrs. Husted, 1, 2, 3, 4, and 5 in Evidence, No. 1 being a negotiable book and the others being non-negotiable, and in this group here,



(Testimony of Helen Husted.)

which is Petitioner's Exhibit for Identification 59—

The Referee: There are seven of them—59.

Q. (Continuing): 59 there are 7 non-negotiable books here. Would you just examine these books just briefly and state whether or not you recognize those as some of the warehouse receipt books that you worked on up there in your employment?

A. Yes, this is a negotiable warehouse receipt book.

The Referee: You are referring now to—

Mr. La Shelle: No. 1.

The Referee: Petitioner's Exhibit No. 1.

The Witness: No. 1.

The Referee: In Evidence.

The Witness: Uh-huh.

The Referee: Now, you might refer to 2, 3, 4, and 5.

The Witness: Well, 2, 3, 4, and 5 are all the same kind of—

The Referee: Look at them. [1457]

The Witness: Do you want me to look at them all?

The Referee: No, I want you to look at the four volumes.

The Witness: Yes, these are the non-negotiable warehouse receipt books.

The Referee: And now, Mr. La Shelle wants you to look at this group in Petitioner's No. 59, for Identification.

(Testimony of Helen Husted.)

Mr. La Shelle: Just run briefly through each one.

The Witness: Yes, these are the non-negotiable warehouse receipt books.

Q. As part of your duties, did you make out the warehouse receipts upon instructions?

A. Yes, sir.

Q. And who usually gave you those instructions?

A. Mr. McMains, generally.

Q. And what is his first name?

A. Walter—W. S. McMains.

Q. And in filling out the warehouse receipt, would you just tell the Court how you did it? I mean, the mechanics of it—what you did with the book before and after making the receipt?

A. Ordinarily, Mr. McMains supplied the information on a little rough draft, giving the number of the barrels and the type of goods and how many proof gallons are involved and if you notice, they're made out in triplicate and it was just up to me to date them and put the name of the owner of [1458] the goods on them and then describe the goods and then on the bottom of the receipt is a little section that has to do with the statement of the cost of the storage and that's all.

Q. In typing them up, did you use carbons?

A. Yes, sir.

Q. And how would you make that operation in typing? Would you take the copies out of the book or what?

A. You have to tear the copies out of the book

(Testimony of Helen Husted.)

because it's on a perforation and the little section on the end there has never been filled out so far as I know. So we had no use for it.

The Referee: You mean the stub?

The Witness: The stub, yes. We have never filled that out.

Q. I notice a lot of these, not most of them, have the copies put back with scotch tape.

A. That's right, sir. The point is that very seldom was there any purpose in having these as a file copy because we had no use for it.

Q. Well, I mean I take it the scotch tape was used because you tore it out to be typed.

A. That's right.

Q. And then you used the scotch tape to put them back. A. That's right.

Q. And apparently followed the same routine for putting in cancelled originals.

A. That's right.

Q. Now, where did you keep these warehouse receipt books? [1459]

A. These warehouse receipt books have been stored on a shelf in the vault.

Q. And where is the vault located?

A. It's just a little extra room off of the main office.

Q. Off of the main office. A. Yes.

Q. And during the——

The Referee: Pardon me, Mr. La Shelle. Main office of where. Where is the location?

(Testimony of Helen Husted.)

The Witness: Just outside of Napa—Monticello Road and Atlas Way, Napa.

The Referee: Whose place of business?

The Witness: Hedgeside.

Q. You are familiar with the general premises up there, are you? A. Yes, sir, very.

Q. That is the warehouse, the office and the distillery and the residence and so forth.

A. Yes, sir.

Q. Along the lines that the Judge just asked you, would you be good enough to take this pad and draft a rough sketch of how the buildings are?

Mr. Walsh: Just a minute, if your Honor please, I object to that as incompetent, irrelevant and immaterial, this witness drawing a diagram. The best evidence is the plat of the Hedgeside premises.

Mr. La Shelle: That's quite true, but this witness can draw an approximation as to how the setup is there, what offices there are and what buildings, that's [1460]—all—just to give the Judge an idea.

The Referee: Where is the plat, Mr. Walsh?

Mr. Walsh: Well, the plat can be produced any time. There is a plat attached to these applications for licenses. I think it's already in evidence, your Honor.

The Referee: That's what I'd like to know.

Mr. Walsh: I think it's already in evidence.

The Referee: Maybe it will save this witness doing some drawing here.

Mr. La Shelle: In the meantime, would you just draw it?

(Testimony of Helen Husted.)

Mr. Walsh: There is an application—the applications that were filed for the permits.

(Discussion off the record.)

Mr. Walsh: There is a plat available, if your Honor please.

Mr. La Shelle: The only thing I want to do is to show your Honor the premises. What I have in mind is just two warehouses, kind of in a line—this little building next to that is an office, this is the Hedgeside office and there is something else again. I want to show where that is in relation to the warehouses.

The Referee: You may proceed. Overruled.

The Witness: Well, this won't be very good but it will do the trick. This is a warehouse (indicating) [1461] and this is a warehouse (indicating)——

Mr. La Shelle: Just finish it and then you can explain it to the Judge.

The Witness: All right.

Mr. La Shelle: What you have drawn will show the whole Hedgeside premises.

The Witness: No, I didn't put the houses in.

Mr. La Shelle: What is the next number, Judge?

The Referee: The last exhibits were the minute books, 68-A, B and C. This will be 69 for Identification?

Mr. La Shelle: Will you just mark that 69 for Identification please, Judge?

The Referee: Petitioner's No. 69 for Identification is a pencilled drawing made by the witness of the various improvements and the road located on

(Testimony of Helen Husted.)

the Hedgeside Distillery property, is that correct?

The Witness: Yes, sir.

Mr. Fisk: May I take a look at it first, your Honor?

The Witness: That's very rough.

Mr. Walsh: You missed a few but it's all right.

The Witness: I don't have a tank in there and I know I haven't got the pump house and so forth.

Q. This little sketch that you have drawn here, as you look at it on the left there are two oblongs there with "WW" [1462] on each one.

A. Those are the warehouses.

Q. Those are the two warehouses.

A. Yes, sir.

Q. And by "those" you mean IRBW No. 2?

A. Yes, sir.

Q. In other words, both constitute IRBW No. 2.

A. Yes, sir.

Q. And the next building you have divided into three divisions. The lower right-hand part as you look at the map you have "OFF." Is that the office?

A. That is the office, that's right.

Q. And next to that you have "US."

A. That's the storekeeper gauger's office.

Q. That's the storekeeper gauger's office in the same building? A. Uh-huh.

Q. Then above that you have——

A. Rectifying.

Q. Rectifying.

A. Well, then I should have marked the under part there bottling.

(Testimony of Helen Husted.)

Q. Put that in there.

A. I can't show the second floor on that, either.

Q. That has two floors? A. Yes.

Q. You just show the bottom floor. What is the top floor?

A. The gin still.

Q. The gin still. [1463]

A. This is the roadway (indicating). You see, the roadway comes in from the main highway and you can go completely around and out around here (indicating) and get out, or you can come down the roadway and pass between the warehouse——

Mr. Walsh: Your Honor please, what is the materiality of this testimony?

The Referee: I'm sure I don't know, Mr. Walsh, but Mr. La Shelle has had this plot plan marked for identification. What is the materiality in this case?

Mr. La Shelle: Well, the materiality is this, your Honor. As the code states, that copy of the warehouse receipts are kept at the principal place of business of the company in the warehouse and then I just want to develop in the record exactly where these warehouse receipts were kept so that there won't be any confusion. Would you mind just stepping up here for a moment and showing——

Mr. Walsh: Your Honor, if that is Mr. La Shelle's purpose in having this plat drawn and introducing in evidence, then I'm going to renew my objection, if your Honor please, that the best evidence is a plat of the premises and the plant which

(Testimony of Helen Husted.)

is drawn to scale by somebody who is familiar with the entire workings of the plat.

The Referee: There is no offer of any document in evidence. [1464]

Mr. Walsh: Well, then, I object to this line of testimony on the grounds it is incompetent, irrelevant and immaterial.

The Referee: Well, certainly this witness is qualified to testify as to the physical setup of the place where she worked.

Mr. Walsh: Just where she worked and that's all. That's the office. Not of the distillery and the boiler room, the pump house, the gauger's office and the warehouses.

The Referee: Well, temporarily, before I decide that, what happened to the comment with reference to there being a plat attached to one of those documents.

Mr. Walsh: Well, the original is not here.

Mr. Fisk: There is a plat here but it's not a complete one.

The Referee: Does it indicate the office building and the warehouse?

Mr. Fisk: No, it just shows the two warehouses.

The Referee: Just the two warehouses.

Mr. Walsh: There is a plat in existence, your Honor.

Mr. Fisk: The one that's in evidence——

Mr. La Shelle: No, it doesn't show. It shows the interior of the warehouse.

Mr. Walsh: I can produce that. [1465]



(Testimony of Helen Husted.)

The Referee: Is there anything in evidence that indicates any more than the two warehouse buildings or is there any previously marked for identification along the lines that you have referred to, Mr. Walsh, as a plot plan that we have here?

Mr. Fisk: There was some description, but I don't remember any diagram. This is one I have. (Indicating).

The Referee: That doesn't help us very much.

Mr. Ward: As I recall, one of the witnesses has already testified as to where the office itself is located in relation to the two warehouses and the distillery and all the rest of that. It was simply testimony as to where the office was located.

The Referee: You may proceed. Overruled.

Q. In this little building here——

Mr. Walsh: What building do you have reference to?

Mr. La Shelle: Where the office is.

The Referee: What building do you have reference to?

Mr. La Shelle: The one that's marked "U.S. Government Gauger" in the lower right-hand corner of that.

Q. As you look at it, you have "OFF." Is that what you mean by the office?

A. That's the office space.

Q. And next to that is the U. S. Government Gauger's office?      A. That is right.

Q. And to the left are two oblongs marked "WW" respectively. [1466]

(Testimony of Helen Husted.)

A. That's right.

Q. Those are warehouses constituting IRBW No. 2? A. That's right.

Q. Approximately how much space is there between the building where the office is and where the warehouse starts, roughly?

Mr. Walsh: Now, if your Honor please, I am going to object to that question as incompetent, irrelevant and immaterial.

The Referee: Overruled. How far is it?

The Witness: It's—

The Referee: Approximately.

A. The space of a truck and a half.

Q. And the rest of these buildings that you have denoted on here you have storage here on a building marked "storage." A. Yes.

Q. And then you have a building here marked "dist". What's that?

A. That's the distillery, but I haven't indicated the little gauger's office that's down there.

Q. Then you have "Stone house."

A. Yes.

Q. That's the residence.

A. That's the residence.

Q. Then you have "swimming pool."

A. Yes.

Q. That's a house (indicating)?

A. That's another residence. [1467]

Q. What's this (indicating)?

A. Laporì—that's the name of the man that owns that building.

(Testimony of Helen Husted.)

Q. And there's another place here called "McMains."

A. Yes, Mr. McMains used to own that house. He is no longer there.

Q. There's another place here called "barns."

A. Yes, those are horse barns.

Q. There's another place here marked "Logan."

A. That was where the Logan house is. You should have a disticraft location here too, approximately.

Q. Is that the disticraft place where they make the Silverado grape brandy? And then the lines that you have drawn around the warehouses and the building that houses the government gauger's office, the bottling room and the rectifying room, you have drawn a road running around there.

A. Uh-huh.

Q. And there was a vault off of this office where the warehouse receipt books were kept?

A. Yes.

Q. Would you sit down please?

Mr. La Shelle: We offer that in evidence as Petitioner's Exhibit next in order, your Honor.

Mr. Walsh: I am going to object to that offer in evidence, if your Honor please, as incompetent, irrelevant and immaterial and not the proper representation and not a correct drawing or plat of the [1468] Hedgeside premises.

Mr. La Shelle: Your Honor, it's not intended to be accurate. It's intended to be an approximation. This objection would be the type of an objec-

(Testimony of Helen Husted.)

tion that would prohibit the witness from drawing the approximate positions of a car after the automobile accident because they didn't have it down to within an inch. It's simply to show that the building that housed the office, the United States government gauger's office, was a truck and a half lengths or so of the warehouses.

The Referee: Anything further gentlemen? Petitioner's Exhibit No. 69 for Identification, overruled, No. 69 in Evidence.

Q. Now, Mrs. Husted, during the period of time of approximately May '45 to sometime in March of '49, to your knowledge were the warehouse receipt books with the copies in them as they appear there, at all times there in the office or in the vault? A. I would say they were.

Q. Now—

Mr. Walsh: What was that last answer?

The Witness: I would say they were.

Mr. Walsh: You say you would say they were.

Q. Now, Mrs. Husted, among your general duties there, as I understand it, was a stenographer writing letters. A. Yes, sir.

Q. And one thing and another. And I take it that you are [1469] and were acquainted during those periods of time, with Mr. R. I. Stone?

A. Yes, sir.

Q. And Mr. D. F. Logan? A. Yes, sir.

Q. And Mr. Henry Roberts? A. Yes, sir.

Q. And Mr. McMains? A. Yes, sir.

Q. I always forget. W. S. McMains, is it?

(Testimony of Helen Husted.)

A. Yes, sir.

Q. And are you familiar with their signatures?

A. Yes, sir.

Q. Have you seen each one of those gentlemen sign their names from time to time during that period?

A. Yes, sir.

Q. And have you handled the letters for them—correspondence?

A. Yes, sir.

Q. Referring to Petitioner's Exhibit No. 43, referring to these warehouse receipts, simply for the sake of brevity I am going to omit the B because it's on all of them. I am just going to refer to the numbers if that's all right. Referring to Exhibit No. 43, I show you warehouse receipt No. 3525 and ask you to look at the two signatures appearing on that receipt and ask you if you recognize them?

A. Yes, sir.

Q. And those signatures are the signatures of whom?

A. Mr. R. I. Stone and Mr. McMains.

Q. And with reference to 3538, there appear to be two signatures that purport to be the signatures of Roberts and [1470] McMains. Do you recognize those signatures?

A. Yes, sir, those are their signatures.

Q. And directing your attention, the attention of Court and counsel to the back of that receipt, under the general caption "Storage Record" there appears to be what purports to be a withdrawal of 36 barrels from this receipt on June 2 and 3, 1948 and then it shows the balance left and the serial

(Testimony of Helen Husted.)

numbers and then under the caption "Signature" appears to be two sets of initials. Do you recognize the initials that are written there?

A. Yes, that's McMains' signature—initials.

Mr. La Shelle: This is one of the receipts that is undated, where the date was left off the receipt and the withdrawals show the date of the withdrawal portion of it about June 2 or 3, of '48 which establishes, at least according to our contention, that the receipt was issued sometime before June 2, '48.

Q. I show you warehouse receipt 3539 and ask you if you recognize those signatures. If you do, state whose they are.

A. Mr. McMains and Mr. Logan they are.

Q. And with reference to warehouse receipt 3541, I ask you the same question, as to whether you recognize the signatures and whose they are.

A. Yes, sir, Mr. Stone and Mr. McMains.

Q. And with reference to 3543, the same question with reference to the signatures. [1471]

A. Mr. Stone and Mr. McMains.

Q. With reference to 3544, the same question.

A. Mr. Stone and Mr. McMains.

Q. And with reference to 3545, the same question. A. Mr. Stone and Mr. McMains.

Mr. La Shelle: That completes the warehouse receipts group No. 43 for Identification. And on the back of this, your Honor will note that you have written Schenley, Petitioner's No. 43 in Evidence, January 26, 1950. However, at the same time, there was a statement made by you in the record that

(Testimony of Helen Husted.)

what was in evidence was limited to the documents behind the warehouse receipts which were commonly called supporting documents for the purpose of description. The warehouse receipts as such did not go into evidence at that time. We now, on Petitioner's Exhibit 43, offer the warehouse receipts 3525, 3538, 3539, 3541, 3543, 3544, and 3545 and ask that they be considered in evidence along with the other documents in Petitioner's No. 43.

Mr. Fisk: May I ask the witness a couple of questions?

The Referee: On the offer of this exhibit?

Mr. Fisk: Yes, on the offer of these.

#### Voir Dire Examination

By Mr. Fisk: Q. Mrs. Husted, you have no—or do you have any recollection at the present time of having typed out these particular—

A. No, there were so many of them, I wouldn't—

Q. You don't have any— A. No.

Q. But you were a stenographer at Hedgeside during the period that these documents bear dates, is that right? A. Yes, sir.

Q. Did anyone else there beside you type out—

A. Occasionally.

Q. Who else, beside you?

A. You see, I only worked from nine until four-thirty and if there was ever occasion to have a warehouse receipt before that and in the morning or after that and in the evening then it was up to someone else to do it.

(Testimony of Helen Husted.)

Q. Well, did Mr. McMains sometimes type these?

A. Sometimes, sir.

Q. And did Mr. Roberts sometimes?

A. No, I don't think so.

Q. Did Mr. Stone sometimes type them?

A. No, I don't think so.

Q. You didn't keep the warehouse receipt book yourself, did you?

A. No, not at my desk. It was always in the vault any other time when I needed them.

Q. You could just go into the vault and get it, but you [1474] personally weren't delegated the custody, were you, of these books?

A. Well, nobody else particular handled them beside me. I mean, it was considered like some other form that I would be using in the course of a day's work.

Q. When you typed one of these books, did you check any records at all?

A. No, sir, I did it on instruction.

Q. One of these individuals that you have just named would come over to you and say type out a warehouse receipt and give you the date it took place.

A. Mr. McMains generally, sir. Yes.

Q. You never at any time made any check on these receipts.

A. No, sir.

Mr. La Shelle: Mrs. Husted, if you shake your head, the reporter can't hear.

The Witness: Excuse me.



(Testimony of Helen Husted.)

Mr. La Shelle: She doesn't know whether you are saying yes or no.

Q. Then you typed the original and two carbons, is that right?      A. Yes, sir.

Q. All of which were taken out of the book.

A. Yes, sir.

Q. Did you then replace the carbons in the book?

A. Yes, sir, immediately.

Q. Immediately.      A. Yes, sir. [1475]

Q. Do you mean before you even handed the original to anyone?

A. That was—you see, my desk at the office was in proximity to Mr. McMains and it was just a question of turning around and dropping the original on his desk so that I do that and then put the copies back in.

Q. Usually, you would get instructions from Mr. McMains?      A. Yes, sir.

Q. And you would make out these warehouse receipts and you would turn around and drop the original on his desk and then you paste the two copies back in the book and put the book back in the safe.      A. Yes, sir.

Q. And forget about it, is that right?

A. Yes, sir.

Q. You don't know what Mr. McMains did with the original. You didn't pay any attention to that, is that correct?

A. Well, I know what he did with it.

Q. Well, it wasn't part of your duties to see what he did with it.

(Testimony of Helen Husted.)

A. Not to check, no, sir.

Q. You just made it out and handed it to him.

A. Yes, sir.

Q. You didn't know whether he signed it or who signed it.

A. Well, he did sign it.

Q. Unless it was brought to your attention later. Did you get that?

A. I follow you all right, yes. There was no reason for [1476] me to check to see that it was carried through.

Q. You didn't make any check to see if the warehouse receipt had already been issued.

A. No, sir.

Q. Covering the same goods.

A. That was not assigned to me.

Q. I say, you made no check at any time nor were you ever at any time given any instructions to that effect.

A. No, sir.

Q. Is that right?

A. That's right, sir.

Q. Did you ever question Mr. McMains at any time?

A. No, sir.

Q. Or Mr. Stone?

A. Oh, no, sir.

Q. You say that with a good deal of emphasis. Will you elucidate a little?

A. If you were my supervisor, I wouldn't question your judgment either.

Q. In other words, Mr. Stone was the final say in Hedgeside at that time, is that right?

A. Well, I would say this. That any instruction I might receive from a supervisor, I, personally, would never question.

(Testimony of Helen Husted.)

Q. But particularly, Mr. Stone.

A. Oh, I don't say particularly Mr. Stone.

Q. You don't know whether these documents ever went out of the possession of Hedgeside, do you?

A. The originals?

Q. Yes, these particular ones here. [1477]

A. Oh, I can't say as to those particular ones but it's——

Q. And that—Are you finished?

A. Inasmuch as the owner of the goods on top there is indicated in each instance, it would be assumed that they would go to the proper parties.

Q. But you have no personal knowledge of that.

A. Oh, no. I would have no reason to know.

Q. On warehouse receipt 3538-B, do you recognize that signature?

A. Yes, sir.

Q. Under Hedgeside Distillery Corporation, as being whose signature?

A. Mr. McMains.

Q. And do you recognize the handwriting on the back?

A. Yes, sir, it's Mr. McMains'.

Q. Do they appear to you to have been placed there at the same time?

Mr. La Shelle: Well, just a moment, your Honor, we object to that question. Nobody can tell——

Mr. Fisk: She's examined it as a handwriting expert, your Honor.

Mr. La Shelle: Oh, no.

The Referee: One at a time.

Mr. La Shelle: We object to that. This witness

(Testimony of Helen Husted.)

states she is familiar with the signature. She is not a handwriting expert. This is not proper cross-examination as to when the signatures were placed. That's guess work. [1478]

The Referee: Sustained.

Q. Do you recognize the handwriting on the back? A. Yes.

Q. Do you know when the handwriting was placed on the back? A. Yes.

Mr. La Shelle: We make the same objection as heretofore made, your Honor.

The Referee: She may answer. Do you know when it went on there?

A. No, except from the information that's on the receipt. I would say that the withdrawals were made on June 2 and 3, 1948. I can't say whether he put that information on there on the second or the third or maybe didn't get to it until a day or two later. I can't tell you that.

Q. You just recognize that as his handwriting.

A. Yes, sir.

Q. And under the column on the back of the warehouse receipt, under the column "storage record" under the heading "signatures," the first signature seems to be an initial. Do you recognize that? A. Yes, sir.

Q. Whose initial is that?

A. Those are Mr. McMains'.

Q. And what is the second signature?

A. His, too.

Q. Those are initials of the same person?

(Testimony of Helen Husted.)

A. Yes, sir. [1479]

Q. Now, in the column over to the right "quantity due on receipt" it appears to have been first filled out in pencil.

A. That's right.

Q. Was that customary?

A. Mr. McMains often did that.

Q. He would fill it out in pencil and then write over it in ink?

A. Yes, sir.

Q. Did he do it at the same time?

A. Well, maybe and maybe not.

Q. Well, did he have difficulty writing or spelling?

A. No.

Q. Why did he fill out first in pencil and then write over it in ink?

A. Well, you know Mr. Fisk, that Mr. McMains is a little bit—has a little palsy condition, you know.

Q. No, I did not know.

A. Didn't you? Well, he sometimes fills out in pencil and then goes over it in ink. I mean, if you saw the man personally—

Q. But this is his handwriting, is it not?

A. Yes.

Q. And wouldn't you say that is good penmanship?

A. Yes, sir, he writes very nicely.

Mr. La Shelle: Just a moment. When you say "this," you are referring to the lettering under date?

Mr. Fisk: Yes. [1480]

A. (Continuing): But he may, when he was doing this you see, have a group of receipts that he

(Testimony of Helen Husted.)

was checking out at the same time and wrote this information on. Maybe there are several others in the group that were taken care of at the same time and then he went back and made a permanent record of it.

Q. And did he have a practice of filling out certain information at one time and then later adding to it?

A. No, it depends how it all comes up. I mean, if you have several to do at one time, you perhaps would follow the same procedure yourself sometime.

Mr. Fisk: Well, your Honor, that's all the questions I have to ask her—of Mrs. Husted on voir dire. I object to it on the grounds there is no foundation laid that these documents were ever delivered.

Mr. Walsh: I make the same objection, if your Honor please.

Mr. La Shelle: We submit the objection, your Honor.

The Referee: 43, formerly marked in evidence, exclusive of the warehouse receipts, now becomes 43 in Evidence, including the warehouse receipts.

Mr. La Shelle: Referring now, your Honor, to Petitioner's Exhibit No. 49 in Evidence, which has the same status as 43, the supporting documents are in evidence but the warehouse receipts are not yet in [1481] evidence, going on down the list Frank, so that you can follow it, the first receipt is 3381.

(Testimony of Helen Husted.)

By Mr. La Shelle: Q. Would you examine the signatures on that receipt and tell us if you recognize the signatures, and if so, whose they are?

A. The signatures of Mr. Stone and Mr. McMains.

Q. And warehouse receipt 3833, the same question. A. Mr. Stone and Mr. McMains.

Q. And 3384 the same question.

A. Mr. Logan and Mr. McMains.

Q. And 3385 the same question.

A. Mr. Logan and Mr. McMains.

Q. And 3392 the same question.

A. Mr. Logan and Mr. McMains.

Q. And 3393 the same question.

A. Mr. Logan and Mr. McMains.

Q. I think technically, you didn't exactly answer my question. The question was: Do you recognize the signature? A. I do.

Q. And if so, whose they are? A. I do.

Q. And I take it from the answers that you recognize them? A. Yes, sir.

Q. And that they are the signatures of the gentlemen you mentioned. A. Yes, sir.

Q. And with reference to 3398, the same question. Wait a minute. Have I gone beyond my exhibit number? [1482]

The Referee: No.

Q. 3398? Mr. Logan and Mr. McMains.

Q. And 3399?

A. Mr. Logan and Mr. McMains.

Q. 3400? A. Mr. Logan and Mr. McMains.

(Testimony of Helen Husted.)

Q. 3402? A. Mr. Logan and Mr. McMains.

Q. And 3403?

A. Mr. Stone and Mr. McMains.

Q. 3404? A. Mr. Logan and Mr. McMains.

Q. 3407? A. Mr. Logan and Mr. McMains.

Mr. La Shelle: That comprises the group in Petitioner's Exhibit No. 49.

(Discussion off the record.)

Mr. La Shelle: With reference to Petitioner's Exhibit No. 49, we offer those warehouse receipts in evidence along with the other groups at this time, your Honor.

Mr. Fisk: Same objection.

Mr. Walsh: Same objection, your Honor.

The Referee: Exclusive of the memorandums attached, Petitioner's Exhibit No. 49 in evidence, exclusive of the warehouse receipts, now will include the warehouse receipts and excluding the memorandums.

Q. Mrs. Husted, I show you Petitioner's Exhibit for Identification No. 45-A, which purports to be a letter from Hedgeside to Schenley, dated November 27, 1948. Is there anything on that letter that would indicate to you whether or [1483] not you typed it?

A. Yes, sir, the signature line. (indicating)

Q. You pointed to a line where it say "WM:H."

A. Right, sir.

Q. And what does "WM" represent?

A. Mr. McMains.

Q. And this "H" is—— A. Mine.



(Testimony of Helen Husted.)

Q. For Helen?           A. Yes, sir.

Q In other words, when you type a letter, you type in the small letter "h" to indicate you typed it. And do you recognize that signature on that letter?           A. Yes, sir, that's Mr. McMains.

Mr. La Shelle: We have previously referred to this in the record as Petitioner's Exhibit No. 45 which is also attached office copy of a letter replying to that which I have in my notes as "A" is this (indicating) and "B" is that, although it does not appear here. But in any event, we offer this letter in evidence at this time.

Mr. Fisk: Well, your Honor, I am certainly going to object to that. Here is a letter, what purports to be a letter on the letterhead of Hedgeside Distillery Corporation and it is according to this witness, signed by W. S. McMains and that's all there is as far as showing that this letter ever went out—the fact that this witness says that she typed it. There may be some presumptions in connection with the warehouse receipt [1484] but there are no presumptions in connection with this letter.

Mr. La Shelle: May it please the Court——

Mr. Fisk: Furthermore, it's——

Mr. La Shelle: It has been produced by the person to whom it is addressed, to-wit, Schenley.

The Referee: Did you finish, Mr. Fisk?

Mr. Fisk: Yes, sir.

The Referee: Anything further, Mr. La Shelle?

Mr. La Shelle: We are not offering at this time the yellow copy.

(Testimony of Helen Husted.)

The Referee: Petitioner's 45 for Identification contains a yellow copy dated December 1, 1948, typewritten Schenley Distillers Corporation to Hedgeside Distillery Corporation. That is the first sheet. The second sheet is a letter dated November 27, 1948 signed Hedgeside Distillery Corporation, W. S. McMains, secretary, addressed to Schenley Distillers Corporation, 850 Battery Street, San Francisco, California, attention Mr. Baglin and there is attached to the letter, Schenley Distillers Corporation inventory IRBW-111. Now, Mr. La Shelle, what are you offering?

Mr. La Shelle: I am not offering this at this time, your Honor.

The Referee: What do you mean by "this"?

Mr. La Shelle: Oh, I'm sorry. I'm not offering the [1485] yellow office copy dated December 1. I have not qualified that. I am offering the letter dated November 27, 1948 and the enclosures attached to it as mentioned in the letter.

Mr. Fisk: Your Honor, I would like to make a further objection that it's self-serving and hearsay as far as the Bank is concerned. That letter is offered for the purpose of proving the contents.

The Referee: Anything further, Mr. Walsh?

Mr. Walsh: No.

The Referee: Petitioner's 45 for Identification becomes 45 in Evidence, exclusive of the top yellow sheet dated December 1, '48, together with the attachment that is referred to in the letter of November 27, a list of the merchandise to be transferred,

(Testimony of Helen Husted.)

giving serial and warehouse receipt numbers as attached. I have just read from the letter. We will have a recess for a couple of minutes, gentlemen. That's 45 in evidence.

Mr. La Shelle: Yes, your Honor.

The Referee: Exclusive of the yellow sheet.

(A brief recess was taken.)

After Recess.

Q. Referring to Exhibit No. 50, I show you warehouse receipt No. 3511 and ask you if you can identify the signatures on that warehouse receipt?

A. The signatures are Mr. Stone and Mr. McMains.

Q. And the same question with reference to warehouse receipt 3512.

A. Mr. Stone and Mr. McMains.

Q. And the same question with reference to 3671?

A. Mr. Robert and Mr. McMains.

Q. And then I will also show you in connection with that receipt number 3671, a letter on Hedge-side letterhead addressed to Schenley, dated December 6, 1948 and ask if you recognize that signature?

A. That is Mr. McMains' signature.

Q. And is that a letter that you typed?

A. Yes, sir.

Q. That has the initial "H" down at the bottom.

A. That's right.

Q. And I'll show you 3673 and ask you the same question with reference to the signatures.

A. Signed by Mr. Robert and Mr. McMains.

(Testimony of Helen Husted.)

Q. And I'll also show you in connection with that receipt 3673, a letter dated December 7 on Hedgeside letterhead addressed to Schenley and ask you if you can tell us whose signature that is.

A. Mr. McMains.

Q. And did you type that letter?

A. Yes, sir, I did.

Q. From the letter "H", I take it.

A. Yes, sir. [1487]

Mr. La Shelle: At this time, your Honor, on Exhibit No. 50, we ask that the warehouse receipts themselves go into evidence as in the other exhibits and that attached to 3671 and 3673 that these two letters go into evidence, which are the letters which enclose the warehouse receipts in question. That originally was on the bottom of the exhibit. But these letters were excluded from evidence, along with the warehouse receipts, at the time the supporting documents went in. They were clipped to the back of the warehouse receipts in question.

Mr. Fisk: I would like to make the same objection as to the warehouse receipts and the same objection as the last one.

Mr. Walsh: I will join in the same objection.

Mr. Fisk: As far as the Bank is concerned, the letters are self-serving and hearsay and not binding on the Bank.

The Referee: Petitioner's Exhibit No. 50 in Evidence as of January 26, 1950, exclusive of the letters and the warehouse receipts, the entire set of documents, the objection is overruled and Petition-

(Testimony of Helen Husted.)

er's Exhibit No. 50 includes the warehouse receipts and the two letters referred to by counsel for the petitioner, together with the supporting documents. And I take it that the respondents have no objection with reference [1488] to the substitution of photostatic copies of the warehouse receipts without waiving any of your other objections to the documents.

Mr. Fisk: No, but we were never given copies of the letters.

Mr. La Shelle: Well, I mean, as a matter of courtesy, Mr. Fisk, I have provided you with many, many copies, although not required to.

Mr. Fisk: I understand, but if it is being substituted, I want to know.

Mr. La Shelle: No, no.

The Referee: No, so there will be no misunderstanding in the record, the original letters are remaining in evidence. Counsel for the petitioner has substituted photostatic copies of the warehouse receipts.

Mr. La Shelle: That has already been done quite some time ago.

Mr. Fisk: No objection to that.

Mr. La Shelle: The letters themselves, I haven't had any copies made. The originals are in evidence and will stay in.

Q. Referring to Exhibit No. 51 in Evidence, which has the same status in evidence as No. 43, beginning with warehouse receipt No. 3674, refer-

(Testimony of Helen Husted.)

ring to 3674, warehouse receipt, I hand you the same and ask you to identify the signatures on that.

A. The signatures are those of Mr. Robert and Mr. McMains. [1489]

Q. And 3675 the same question?

A. The signature of Mr. Robert and Mr. McMains.

Q. And 3676?

A. The signature of Mr. Robert and Mr. McMains.

Q. 3678?

A. Mr. Stone and Mr. McMains.

Q. And 3679, the same question?

A. Mr. Robert and Mr. McMains.

Q. And 3680 the same question?

A. Mr. Robert and Mr. McMains.

Q. And 3685 the same question?

A. Mr. Robert and Mr. McMains.

Q. And 3686 the same question?

A. Mr. Robert and Mr. McMains.

Q. And 3687 the same question?

A. Mr. Robert and Mr. McMains.

Q. And in connection with some or all of these warehouse receipts in that group, I'll show you seven letters on the letterhead of Hedgeside, addressed to Schenley, dated December 8, 1948, December 9, 1948, December 10, 1948, December 17, 1948, December 20, 1948, December 21, 1948, and December 22, 1948 and ask that you look at each one of those letters and attached signature and tell us whether or not you typed them.

(Testimony of Helen Husted.)

A. Mr. McMains signed them and I typed them.

Q. And that is the whole set of letters.

A. Yes, sir. [1490]

Mr. La Shelle: Now, with reference to this Exhibit No. 51, your Honor, we ask that these warehouse receipts be now received in evidence and I will attach to the warehouse receipts these letters that correspond by number as they were before, the original letters, one for 3674, one for 3675, 3676, 3678 (which I'm clipping in all instances to the back of the document), 3679, 3680, 3685, and I have got two letters here that were not clipped. They were shoved in, as we ran out of clips. I'll show you two further letters on the Hedgeside letterhead to Schenley, dated December 23, 1948 and one dated December 27, 1948 and ask you to examine those two letters and identify the signature and whether or not you wrote them.

A. The signature is Mr. McMains and I wrote them in both instances.

Q. By "wrote them" I mean you typed them.

A. Typed them.

Mr. La Shelle: I'll clip the warehouse receipt in the letter, clipping to the warehouse receipt will be clipped in back.

Mr. Ward: Those last two were 3686 and 3687?

Mr. La Shelle: 3686 and 3687.

The Referee: Mr. La Shelle, did I understand you to say you were offering these original letters and the warehouse receipts in evidence? [1491]

Mr. La Shelle: Yes.

(Testimony of Helen Husted.)

The Referee: Formerly a part of 51.

Mr. La Shelle: That's right, your Honor.

The Referee: Mr. Fisk?

Mr. Fisk: I should like to make the same objection to the introduction in evidence of the warehouse receipts and of each of the nine letters to the warehouse receipts. There is no showing of delivery and as to the nine letters, to each of the nine letters, they are hearsay and they are self-serving as far as the Bank.

The Referee: Mr. Walsh?

Mr. Walsh: I make the same objection, your Honor.

The Referee: The objection is overruled. Petitioner's Exhibit No. 51 now includes the warehouse receipts in evidence and the letters referred to.

Q. Now, referring to Exhibit No. 52, which has the same status as 43 had, beginning with warehouse receipt No. 3364—Gentlemen, I might state, so counsel won't be looking for it, in this group there are none of these letters involved—showing you warehouse receipt No. 3364, will you identify the signatures on that?

A. Mr. Logan and Mr. McMains.

Q. And No. 3365?

A. Mr. Stone and Mr. McMains.

Q. And 3366 the same question? [1492]

A. Mr. Logan and Mr. McMains.

Q. And 3386 the same question?

A. Mr. Logan and Mr. McMains.



(Testimony of Helen Husted.)

Q. And 3391 the same question?

A. Mr. Logan and Mr. McMains.

Q. And 3394 the same question?

A. Mr. Logan and Mr. McMains.

Q. And 3395 the same question?

A. Mr. Logan and Mr. McMains.

Q. And 3396 the same question?

A. Mr. Logan and Mr. McMains.

Q. And 3397 the same question?

A. Mr. Stone and Mr. McMains.

Q. And 3401 the same question?

A. Mr. Logan and Mr. McMains.

Q. And 3405 the same question?

A. Mr. Logan and Mr. McMains.

Q. And 3406 the same question?

A. Just by Mr. McMains. It is not counter-signed.

Mr. Walsh: Just a minute, may I see that?

Q. And 3408 the same question?

A. Mr. Logan and Mr. McMains.

Q. And 3409 the same question?

A. Mr. Logan and Mr. McMains.

Q. 3410 the same question.

A. Mr. Logan and Mr. McMains. [1493]

Q. 3412 the same question.

A. Mr. Logan and Mr. McMains.

Q. 3414 the same question.

A. Mr. Stone and Mr. McMains.

Q. 3420 the same question.

A. Mr. Logan and Mr. McMains.

Q. 3435 the same question.

(Testimony of Helen Husted.)

A. Mr. Logan and Mr. McMains.

Mr. La Shelle: Let the record show, your Honor, that the various warehouse receipts that I have been showing the witnesses have been originals marked by the Court. As to the group Petitioner's Exhibit No. 52, consisting of those warehouse receipts (and as I said before, there were no letters involved here), we ask that the warehouse receipts, the photostatic copies which the Court has and marked No. 52, that the warehouse receipts in addition to the the other documents, be now entered in evidence.

Mr. Fisk: Same objection, your Honor, as to the warehouse receipts.

Mr. Walsh: I make the same objection, your Honor please, with the additional objection that warehouse receipt 3406-B shows on its face it is not a completed warehouse receipt.

Mr. Fisk: I should like to make the same objection, too, your Honor. [1494]

The Referee: Overruled. Petitioner's Exhibit No. 52 in evidence will now include the warehouse receipts and let the record further show that the Court has only indicated on the documents that are in evidence, the markings of the exhibit numbers and I haven't indicated other than the original identification on the originals.

Mr. La Shelle: Do you think that's necessary?

The Referee: Well, as long as the record is clear on it so there will be no misunderstanding at some later date between the originals and the copies that are in evidence.

(Testimony of Helen Husted.)

Q. I am now working with 53, your Honor, and there are three letters involved here. In Petitioner's Exhibit No. 53 (again let the record show that I am using the original certificates) I'll show you warehouse receipt No. 3480 and ask you to identify the signatures on those.

A. Mr. McMains and Mr. Logan.

Q. And the same question on 3481?

A. Mr. Logan and Mr. McMains.

Q. And the same question with reference to 3482?

A. Mr. Stone and Mr. McMains.

Q. And the same question with 3484?

A. Mr. Stone and Mr. McMains.

Q. The same question with reference to 3486?

A. Mr. Stone and Mr. McMains. [1495]

Q. And the same question with reference to 3505?

A. Mr. Stone and Mr. McMains.

Q. And the same question with reference to 3509?

A. Mr. Stone and Mr. McMains.

Q. And the same question with reference to 3510?

A. Mr. Stone and Mr. McMains.

Q. And the same question with reference to 3529?

A. Mr. Logan and Mr. McMains.

Q. The same question with reference to 3530?

A. Mr. Logan and Mr. McMains.

Q. The same question with reference to 3567?

A. Mr. Stone and Mr. McMains.

Q. The same question with reference to 3568?

A. Mr. Stone and Mr. McMains.

Q. The same with reference to 3569?

(Testimony of Helen Husted.)

- A. Mr. Stone and Mr. McMains.
- Q. And the same with reference to 3572?
- A. Mr. Stone and Mr. McMains.
- Q. And the same with reference to 3573?
- A. Mr. Stone and Mr. McMains.
- Q. And the same with reference to 3575?
- A. Mr. Stone and Mr. McMains.
- Q. And the same with reference to 3590?
- A. Mr. Stone and Mr. McMains.
- Q. And the same with reference to 3592?
- A. Mr. Stone and Mr. McMains. [1496]
- Q. And the same with reference to 3593?
- A. Mr. Stone and Mr. McMains.
- Q. And the same with reference to 3597?
- A. Mr. Stone and Mr. McMains.
- Q. And the same with reference to 3598?
- A. Mr. Stone and Mr. McMains.
- Q. And the same with reference to 3602?
- A. Mr. Stone and Mr. McMains.
- Q. And the same with reference to 3605?
- A. Mr. Logan and Mr. McMains.
- Q. And the same with reference to 3606?
- A. Mr. Stone and Mr. McMains.
- Q. And the same with reference to 3610?
- A. Mr. Stone and Mr. McMains.
- Q. And the same with reference to 3616?
- A. Mr. Stone and Mr. McMains.
- Q. And the same with reference to 3617?
- A. Mr. Logan and Mr. McMains.
- Q. And the same with reference to 3618?
- A. Mr. Logan and Mr. McMains.

(Testimony of Helen Husted.)

Q. And the same with reference to 3619?

A. Mr. Stone and Mr. McMains.

Q. And the same with reference to 3621?

A. Mr. Stone and Mr. McMains.

Q. And the same with reference to 3622?

A. Mr. Stone and Mr. McMains. [1497]

Q. And the same with reference to 3623?

A. Mr. Stone and Mr. McMains.

Q. And the same with reference to 3624?

A. Mr. Stone and Mr. McMains.

Q. And the same with reference to 3629?

A. Mr. Stone and Mr. McMains.

Q. And the same with reference to 3631?

A. Mr. Stone and Mr. McMains.

Q. And the same with reference to 3665?

A. Mr. Stone and Mr. McMains.

Q. And the same with reference to 3669?

A. Mr. Stone and Mr. McMains.

Q. And the same with reference to 3670?

A. Mr. Stone and Mr. McMains.

Q. Now, then, I will show you three letters on the letterhead of the Hedgeside, addressed to Schenley, dated—two dated December 2, 1948 and one dated December 3, 1948, the one letter dated December 2 has just two paragraphs and the other is a little longer and has four paragraphs. Will you look at each one of those three letters, identify the signature and state whether or not they were typed by you?

A. Mr. McMains signed them and I typed them.

Mr. La Shelle: Your Honor, here the long form

(Testimony of Helen Husted.)

of letter dated December 2, 1948, the one that has four paragraphs, refers, your Honor, to this letter (indicating) and then acknowledges receipt of it and [1498] at this time, we ask that the warehouse receipts in this group, No. 53 in evidence, be considered in evidence along with the rest of the documents and that these three letters, two of them dated December 2 and the other dated December 3, from Hedgeside to Schenley, be also received in evidence and I'll clip them all to the back because the warehouse receipts correspond to them by number. And we also ask at this time that the yellow office copy there that is marked for identification, be also marked and be considered in evidence.

The Referee: Read the letter that it refers to.

Mr. Fisk: Your Honor, I should like to make the same objection to the offer of the warehouse receipts as previously made and to the three letters of December 3 and two on December 2, 1948, Hedgeside to Schenley. As to the offer of the copy of the letter, unsigned copy of the letter of Schenley Distillers Corporation, dated December 1, 1948, I submit that that letter is secondary evidence and no demand has ever been made upon the trustee to produce the original, and I submit that.

Mr. Walsh: Same objection, your Honor.

Mr. La Shelle: Your Honor, I will read this letter. In other words, this letter—

The Referee: I understand that, Mr. La Shelle, but Mr. Fisk's further objection is that the copy shows [1499] that it was addressed to Hedgeside

(Testimony of Helen Husted.)

Distillery Corporation and Mr. Fisk claims that to his knowledge, no demand has ever been made on the trustee of Hedgeside Distillery Corporation for the production of the original document.

Mr. La Shelle: Well, in view of the fact that this letter of December 2 of Hedgeside acknowledges receipt of this letter, I submit, your Honor, that it's unnecessary.

Mr. Fisk: Well, there could be two letters on the first. I submit it's hearsay as far as we are concerned.

Mr. La Shelle: No, this letter of December 1 acknowledges receipt of this letter enclosing the warehouse receipts and says "enclosed in accordance with the attached schedule are warehouse receipts requested by you." This letter says: "This morning we received your letter of December 1, 1948 with the original Mountain View warehouse receipts as per we sent you. Thank you very much for your prompt attention in this matter." Not only the letter is acknowledged, but the subject matter is definitely acknowledged.

Mr. Fisk: I don't think that makes any difference.

The Referee: Well, the Bank still is entitled to the original letter if it is available, is it not true? We have the Bank involved and we have the trustee in bankruptcy involved. [1500]

Mr. La Shelle: And as far as that's concerned, your Honor, this involves warehouse receipts that the Bank isn't even claiming.

(Testimony of Helen Husted.)

The Referee: Well, then you have never asked the trustee for the original letter, have you?

Mr. La Shelle: Well, I don't believe that it's necessary.

The Referee: If it's not necessary, why then, the yellow sheet is not necessary to prove your case.

Mr. La Shelle: Well, we'll submit the offer.

The Referee: Very well. Then Exhibit No. 45 formerly in evidence, exclusive of the yellow copy, still remains the same. Then as far as the objection of the Bank and the trustee to the offer of the petitioner to No. 53, it is overruled and the warehouse receipts are received in evidence, together with all of the letters including the letter dated December 2, 1948.

Mr. La Shelle: The one that's mentioned is 3665 and there are two others, your Honor.

Mr. Ward: You mean, I have the letter which refers to that yellow copy?

The Referee: That's the one—December 2, 1948.

Mr. La Shelle: There are two letters dated December 2, one has four paragraphs and encloses receipt 3665. That's the one that refers to the list of [1501] warehouse receipts being sent. As the Judge has pointed out, in view of that letter and the other letter, this letter becomes irrelevant and does not really amount to anything.

Mr. Fisk: As I understand, the Court has sustained our objection to the offer of the secondary evidence—the copy.

The Referee: The Court has sustained the ob-



(Testimony of Helen Husted.)

jection to the receipt in evidence of the yellow copy dated December 1, 1948, which is a part of Petitioner's No. 45 for Identification, 45 in Evidence, being a letter dated November 27, 1948 from Hedgeside to Schenley and the attached document being an inventory. The objection is sustained to the yellow sheet.

Mr. La Shelle: Those three letters have been attached to the warehouse receipts that correspond to it in No. 53, your Honor.

The Referee: And are received.

(Discussion off the record.)

The Referee: It is my understanding that there are certain letters that have been received in evidence that you want to withdraw for the purpose of making copies for yourself and the respondents.

Mr. La Shelle: Yes.

The Referee: And there is no objection, Mr. Walsh?

Mr. Walsh: No. [1502]

The Referee: Mr. Fisk?

Mr. Fisk: No.

The Referee: No objection.

Mr. La Shelle: There are fourteen letters. And they are identified in the record by their dates.

The Referee: And if I turn this over to you so you will pick them out, then you will also have the added responsibility of inserting them back in the same place?

Mr. La Shelle: Yes.

(An adjournment was taken until May 16, 1950 at 10:00 a.m.) [1503]

Tuesday, June 13, 1950

Same appearances.

The Referee: And in the matter of Hedgeside, Mr. La Shelle is returning certain letters that formerly were a part of exhibits——

Mr. La Shelle: 50, 51 and 53, your Honor.

The Referee: Very well.

Mr. La Shelle: And if you will just make a note in the record that the letter which belongs to warehouse receipt No. 3665 is returned and receipt No. 3669 and No. 3670. Those three receipts are in Exhibit No. 53. Then, your Honor, if I may have 50 and 51——

The Referee: Here is 51 and here is No. 50.

Mr. La Shelle: The letter belonging to warehouse receipt No. 3671 is returned and 3673. Those are both Exhibit 50 and Exhibit 51 there's a letter returned for 3674, 3675, 3676, 3678, 3679, 3680, 3685, 3686, and 3687, all of the exhibits. Mrs. Husted.

#### HELEN HUSTED

having been previously sworn by the Referee, resumed the stand and testified further as follows:

Mr. La Shelle: If it please the Court, Mrs. Husted was on at the last hearing and I finished my direct. She is now here for cross-examination.

Mr. Fisk: Shall we proceed, your Honor? [1504]

The Referee: Yes, Mr. Fisk.

(Testimony of Helen Husted.)

Cross-Examination

By Mr. Fisk: Q. Mrs. Husted, I believe that you testified that you went to work for Hedgeside, which is outside of Napa, in 1945? A. Yes, sir.

Q. And then that you worked continuously for Hedgeside from 1945 until March of 1949.

A. Yes, sir.

Q. All during that period, did you work at the distillery properties there at Napa?

A. Yes, sir.

Q. Atlas Way and what's the other street?

A. Monticello Road.

Q. Monticello Road. A. Uh-huh.

Q. And I believe you also testified that a considerable portion of that time you were the only stenographer working there. A. That's right.

Q. Do you recall the portions of that period when there was another stenographer working there?

A. No; Mr. Fisk, there was never another stenographer as such.

Q. What do you mean by "as such?"

A. Well, the other girls in the office might do work for notes, don't you know, but not an actual stenographer.

Q. I see. Were there any other typists there?

A. Well, practically everybody in the office typed.

Q. Well, you mean they could use a typewriter but they didn't in the regular course of business do typing for Hedgeside. [1505]

A. That's right.

(Testimony of Helen Husted.)

Q. Did you do any work during that period for Franciscan? A. Yes, sir.

Q. And the work that you performed for Franciscan you did at the premises of Hedgeside, is that right? A. Yes, sir.

Q. Now, from whom did you receive your pay?

A. Both Hedgeside and Franciscan.

Q. When you commenced working for Hedgeside in 1945, who employed you?

A. Hedgeside.

Q. Well, what individual?

A. Mr. Stone.

Q. And then were you paid by check?

A. Yes, sir.

Q. And you received checks both from Hedgeside and from Franciscan? A. Yes, sir.

Q. Throughout that period, from '45 to March '49, did you receive checks from Hedgeside and Franciscan? A. Yes, sir.

Q. Throughout the entire period?

A. With this exception, that I went off of the Franciscan payroll on the 15th of March.

Q. What year?

A. 1949. There's a fifteen-day interim where I worked for Hedgeside alone.

Q. You didn't leave Hedgeside then until April 1, '49, is that right?

A. Yes.

Q. Who signed the checks that you received from Franciscan?

A. Well, Mr. Fisk, the signature card at the

(Testimony of Helen Husted.)

bank says [1506] that Mr. Stone signs as an individual but it takes two other people to sign the check in case he is not there to sign it—two of the other officers.

Mr. Fisk: Well, now, I ask that the answer go out as not responsive.

The Referee: It may go out.

By the Referee: Q. Who actually signed the checks that you received?

A. Well, they were not always signed by the same person.

Q. And who would sign them then. Tell us the different people that signed them.

A. Well, I don't remember exactly what the other—I believe there are three people on the signature card.

Q. Well, never mind the card—just the checks that you received.

A. Mr. Stone signed them in some instances when he was there to sign them and if he were not, the two other authorized people signed them.

Q. Who else besides Mr. Stone signed your salary checks—what other names?

A. Mr. Logan and Mr. McMains.

Q. Who?

A. Mr. Logan and Mr. McMains.

By Mr. Fisk: Q. Now, you are speaking of the salary checks you received from Franciscan.

A. Yes, sir.

Q. Who signed the salary checks you received from Hedgeside? [1507]

(Testimony of Helen Husted.)

A. The same situation holds there. Mr. Stone as an individual, as president, signed them or if he were not there, two of the other officers.

Q. And the other two officers were Logan and McMains?

A. Yes. Mr. Logan and Mr. Roberts or Mr. Roberts and Mr. McMains. I mean, the combination of any two.

Q. In other words, your salary checks from Hedgeside were signed by Stone, Roberts, McMains, and Logan. Those are the only four individuals that signed either singly or collectively your checks from Hedgeside, is that right? A. Yes, sir.

Q. Now, your checks from Franciscan, the only individuals who signed either singly or together were Stone, McMains, and Logan.

A. Yes, sir.

Q. Did Roberts sign any checks?

A. I don't believe so, sir. I would have to look back to see, to be sure.

Q. Did you make out your own pay checks?

A. No, sir.

Q. You didn't type them out. A. No, sir.

Q. Who did, do you know?

A. Well, whoever was the payroll clerk at the time.

Q. Did they have a number of different payroll clerks there during the period you were connected with Hedgeside? A. Yes, sir.

Q. Do you recall their names?

A. Yes, sir.

(Testimony of Helen Husted.)

Q. Would you state who they were? [1508]

A. Mrs. Boss was there.

The Referee: How do you spell that?

The Witness: B-o-s-s.

A. (Continuing): A. Mrs. Borgone was there.

Mr. Walsh: How do you spell that?

The Witness: B-o-r-g-o-n-e.

Q. These are payroll clerks you are referring to?

A. Uh-huh.

Q. Who——

A. Robert Benning was there; Mrs. Wilcox for Franciscan, Margaret Corbett. I think that's all.

Q. All of those persons at some time had charge of keeping the payroll of either Hedgeside or Franciscan? A. Uh-huh.

Q. Is that right? A. Yes, sir.

Q. Did all of them at sometime keep the Hedgeside payroll and at sometime the Franciscan?

A. No. The assignments — the payroll assignments were made depending on which company they worked for. By that, I mean to say, that Hedgeside and Franciscan each had a bookkeeper or payroll clerk at the same time so that the checks for Franciscan were drawn by a different individual than the one who drew the Hedgeside check.

Q. Did any of those individuals you have just named at the same time serve both as payroll clerk for Hedgeside and Franciscan? A. No, sir.

Q. I didn't get your answer. A. No, sir.

Q. None of them at any time during the period you were there, served as payroll clerk for both of those institutions.

(Testimony of Helen Husted.)

A. No, sir. The operations were separate.

Mr. Fisk: I ask that the last answer go out.

The Referee: It may go out.

Q. You are positive of the last statement you have made, that is, that none of those persons at any time ever served as payroll clerk for Franciscan and Hedgeside. A. Yes, sir.

Q. On what bank was your payroll check from Hedgeside? A. Anglo Bank.

Q. On what bank was your payroll check from Franciscan? A. American Trust, Napa.

Q. How much were you paid per month for services rendered Hedgeside?

A. I started out there, I believe, at 175.

Q. You started out for Hedgeside at 175 a month? A. Yes, sir.

Q. And how long—that's in 1945.

A. Uh-huh.

Q. How long did that continue?

A. Oh, I don't remember exactly, Mr. Fisk.

Q. Well, was it eventually increased?

A. Yes, sir.

Q. Was it increased more than once?

A. I don't remember, sir. [1510]

Q. Did it fluctuate from month to month?

A. No, sir.

Q. Now, how much were you paid by Franciscan?

A. Franciscan, in the first instance, paid me \$25.

Q. A month. A. Yes, sir.

Q. And that continued for how long?



(Testimony of Helen Husted.)

A. Well, I can't remember when the raise came in.

Q. Well, did the pay that you received from Franciscan remain constant throughout your period of employment, that is, from '45 to March, 1949?

A. No, because I got, I believe, \$50 a month from Franciscan at the end.

Q. And you got those respective salaries from those two institutions regardless of the amount of work you did for each of them, is that right?

A. Yes, sir.

Q. Were you paid semi-monthly?

A. Yes, sir.

Q. Now, you testified that you made out the warehouse receipts, that is, you typed out the warehouse receipts.

A. Yes, sir.

Q. For Hedgeside.

A. Yes, sir.

Q. Did you type them out for Franciscan?

A. Yes, sir.

Q. Where were the Franciscan warehouse receipt books kept?

A. In the vault at Hedgeside.

Q. And the Hedgeside warehouse receipt books were kept at the same place, isn't that right?

A. Yes. [1511]

Q. Now, the vault at Hedgeside was in the main office building?

A. Yes, sir.

Q. That is the building where the main office was located.

A. Yes, sir.

(Testimony of Helen Husted.)

Q. And the building where the bottling plant was located.      A. Yes, sir.

Q. And what else was located in that building?

A. The government office.

Q. The government gauger's office?

A. Yes, sir.

Q. Was down at one end.

A. At the far end, yes, sir.

Q. Anything else located in that building?

A. The rectifying room, the gin still on the second floor.

Q. What's the last—the gin still and——

A. On the second floor.

Q. All of those departments were in the same building.      A. Yes, sir.

Q. Now, the Internal Revenue Bonded Warehouse No. 2 was an entirely separate building.

A. Yes, sir, right next to the office building.

Q. Well, they were on the same property.

A. Yes, sir.

Q. But they were entirely separate buildings, with no physical connection between them, isn't that correct?

A. There's just a small roadway for a truck to go through between them.

Q. And the roadway is what—forty or fifty feet wide? [1512]

A. No, sir, just about the width of two cars standing next to each other is all that's between those two buildings—very small space.

Q. Eighteen to twenty.

A. Yes, at the most.

(Testimony of Helen Husted.)

Q. But other than that, there was no physical connection between them at all. A. No, sir.

Q. Were these warehouse receipt books kept at all times in the vault in the office?

A. Yes, sir.

Q. Except when you took them out for typing.

A. Yes, sir.

Q. When you speak of that as a vault, it's a regular vault with a combination? A. Yes, sir.

Q. And did you have the combination?

A. No, sir.

Q. Who had the combination?

A. Mr. McMains.

Q. Did Mr. Stone have?

A. I don't know, but I presume——

Q. Was that vault regularly kept locked except when in use?

A. I don't know that, Mr. Fisk.

Q. The warehouse receipt books were bound books, permanently bound books with—somewhat on the order of a bank check book, were they not?

A. Yes, sir.

Q. And there were fifty numbered warehouse receipts in each book, is that right?

A. Yes, sir.

Q. And there was then, as to each of those fifty numbers, there was an original and two copies.

A. Yes, sir.

Q. And whenever you typed out an original, you typed out [1513] two carbon copies.

A. Yes, sir.

(Testimony of Helen Husted.)

Q. And in order to type them, you removed the original and the two copies from the book.

A. Yes, sir.

Q. In each instance. A. Yes, sir.

Q. Now, after the typing, I believe you testified you did turn over the original to Mr. McMains.

A. Yes, sir.

Q. And the two copies, what did you do with the two copies?

A. They were re-inserted in the book itself.

Q. And affixed to the stubs by you?

A. Yes, sir, scotch tape.

Q. Scotch tape. A. Yes, sir.

Q. And you performed that operation personally? A. Yes, sir.

Q. And you did it immediately after typing.

A. Yes, sir.

Q. In each instance.

The Referee: What was your answer to Mr. Fisk's last question?

A. Yes, sir, in each instance. I think there's a question on a couple of them. There may be a dozen of them but where there is no yellow copy pasted back in the book, I think that shows up on the list that we have here.

Q. Well, what I'm asking you—

A. So in those instances, that yellow copy did not—yellow or pink, whichever one it may be that's used in those [1514] instances—those dozen instances or so, they are not in the book—the two copies are not in the book.

(Testimony of Helen Husted.)

Q. Then as I understand your testimony, there were instances when the copies were not immediately replaced in the book.

A. Just in those ten or twelve that we have on the list that show up there.

Q. Well, do you have a present recollection of a particular ten or twelve in which you didn't follow that practice?

A. No, only insofar as it shows up on the list here.

Q. In other words, you have learned since you came into this courtroom the first time that there were certain instances where copies did not appear in the book, is that right?

A. No, there was always one in the book—always one in the book, but it seems to me, as I recall, that in these few instances that are showing up here, requests were made for the extra copies and we started to use the copies out of the book. I think the correspondence shows that requests were made for an extra copy of those receipts.

Q. Well, now, it is your testimony, as I understand it now, that in each instance you did immediately after typing, replace one copy.

A. Yes, sir, and in most instances two.

Q. Now, wait just a minute. I'll give you an opportunity. However, in certain instances, the second copy was held out for a period of time, is that right?

A. No, not held out because it never came back.

(Testimony of Helen Husted.)

I mean, [1515] not held out for a period of time because it never came back.

Q. Well, at any rate, as to the second copy, there were a number of instances where you didn't immediately replace it in the book, is that right?

A. On these few instances that show up here on our list, yes, they didn't—both copies did not go into the book there.

Q. The only instances where you didn't replace a second copy are the instances where they do not now appear in the book, is that it?

A. That's right.

Q. Now, you are saying that of your own personal recollection, is that right?

A. That's right.

The Referee: What is the answer, Mrs. Husted?

The Witness: That's right.

Q. Now, do you recall how many of these instances there were?

A. No, I can't tell you right off, Mr. Fisk.

Q. Well, do you recall with respect to what kind they were?

A. Well, I think you will—I know that they were all Schenley's.

Q. You know that they were all Schenley's.

A. Yes.

Q. In other words, you have learned since your last testimony that they were all Schenley's?

A. No, not since I last testified because I recall the correspondence in which Schenley's had asked for an extra copy.

(Testimony of Helen Husted.)

Q. And when did you last refresh your recollection on that [1516] correspondence or with respect to that correspondence?

A. I haven't refreshed by memory.

Mr. La Shelle: Now, just a moment, I object to that. The question assumes she has refreshed her recollection, which is something she hasn't said.

The Referee: She may answer.

A. I haven't refreshed my memory on it, Mr. Fisk.

Q. When did you last see the correspondence you had reference to?

A. I don't know that—it may be that the correspondence is in with the exhibits already in.

Q. Well, do you understand my question?

A. Yes, you asked me when.

Q. When did you last see it?

A. Well, I don't know.

Q. Well, have you seen it within the last three months?

A. I don't know that I have seen it in the last three months.

Q. You can't recall whether you have seen it in the last three months or not?

A. Well, I haven't had anything to do with Hedgeside's business for over a year.

The Referee: That's not the question, Mrs. Husted.

A. So I would have no opportunity to see any correspondence from them unless it would appear in the exhibits here.

(Testimony of Helen Husted.)

Q. Well, have you examined all of the Hedge-side-Schenley [1517] correspondence in the exhibits here? A. No.

Q. You have not? A. No, sir.

Q. Have you examined any of them?

A. In the process of working with them, yes.

Q. And you examined that since the last hearing?

A. I don't know that I have, sir. Since the last hearing?

Q. Yes.

A. I haven't seen any of the exhibits since the last hearing.

Q. Well, then, within the last two months have you examined them?

A. No, not individually.

Q. Well, by individually, do you mean alone or do you mean you haven't—

A. I mean that I haven't looked at every piece that's in the exhibits.

Q. But you have looked at some of them.

A. Only insofar as we were using them to check the exhibits against the list that Mr. La Shelle has set up for that period.

Q. And that you have done within the last two months, is that right?

A. Not individually. Not looking at every sheet.

Q. Well, then casually or generally you have done it within the last two months, is that right?

A. Not all of it, sir.

Q. Well, have you seen any of it, casually or



(Testimony of Helen Husted.)

otherwise, within the last two months?

A. Why surely, I had them on my lap here, checked them as [1518] Mr. La Shelle was asking me to identify them. Naturally, I looked at those.

Q. And that is the only time that you examined any of them in any way, is that right?

A. No, because I checked with Mr. La Shelle the exhibits and warehouse receipts against the list that he has.

Q. In other words, you went over that correspondence with Mr. La Shelle before you testified on the last case.

A. No, sir.

Q. You did not?

A. No, sir, not individually I did not.

Q. Well, did you go over it in any fashion?

A. With him here, yes, as I was testifying I went—I checked each one as I went along so I would know what to—so that I would know that I was identifying the right thing.

Q. But outside of in this courtroom, did you go over it with him in any fashion?           A. No.

Q. With Mr. Ward or with anyone?

A. No, sir.

Q. You did not.           A. No, sir.

Q. Nor Mr. Ward nor anyone else.

A. No, sir.

Q. Or anyone connected with Schenley's.

A. No, sir.

Q. So that the only time you recall seeing any of that correspondence was in this courtroom on the

(Testimony of Helen Husted.)

last occasion, except the time you saw them in the first instance, is that right?

A. I would say yes. [1519]

Q. Now, your recollection at the present time as to the copies that are missing, are based on your examination of that correspondence in this courtroom on the last occasion in which you testified, is that right?

The Witness: Will you repeat it again?

(The last question was read by the Reporter.)

A. You see, Mr. Fisk, I was not aware that those copies were not in the book until we made the check because after all, I've been away from the operation for over a year and unless you're working with these things every day, you soon—they soon go out of your mind, you know,—

Q. Well, now—

A. (Continuing) actively.

Q. You said until we made the check. When did you make the check and who is "we"?

A. Mr. La Shelle and I checked the exhibit material so that he could see which ones he wanted copies made of, you know, at the end of the last hearing.

Q. That was after you had examined them here in the courtroom. A. Yes.

Q. So that up until the time you examined that correspondence and these exhibits in the courtroom on the last occasion on which you testified, you did not know there were any missing.

A. I wouldn't say that I didn't know there were

(Testimony of Helen Husted.)

any missing because I don't consider them missing under those [1520] circumstances. The request was made for the copies or they would have been in the book and there was an order given through Mr. McMains to me that someone wanted those copies or they would have been there.

Q. In other words, it is your present recollection that all copies were replaced in the book in each instance except in the case of Schenley, that is, they were replaced immediately after typing, is that right?

A. Yes, sir, I would say that's right.

Q. You are not only talking about the warehouse receipt books that you have examined in this courtroom, but you are talking about all of the warehouse receipt books of the Hedgeside Distillery Corporation, whether they are involved in this proceeding or not, so long as they were kept by Hedgeside during the period from '45 to April, 1949.

A. I put them in there myself during the time I worked there unless I had instructions to do otherwise with them.

Q. Well, from whom would you get such instructions?

A. Mr. McMains.

Q. From Mr. McMains.

A. Uh-huh.

Q. And you have a recollection of having gotten such instructions on occasions, is that right?

A. Yes, sir.

Q. And in what connection did you get such instructions?

A. I don't remember right off, Mr. Fisk.

(Testimony of Helen Husted.)

Q. Did you get instructions in the case involved in this instance here where Schenley asked to have certain of the [1521] copies and never returned them?

A. But those were extra copies and if they needed them for their file. They only needed one for their file, actually, but we always made two and if they needed one extra one, it was easy to supply it.

Mr. Fisk: Well, I ask that the last answer go out.

The Referee: So ordered.

Mr. Fisk: Now, would you read the question back, Miss Reporter?

(The last question was read by the Reporter.)

Mr. Fisk: Do you understand the question?

A. Yes, I do. I had instructions from Mr. McMains on whatever I did in connection with the warehouse receipts.

Q. In other words, you never took any action in that respect without specific instructions.

A. No, sir.

Q. But do you have any definite recollection now as to whether Mr. McMains told you to turn over one of the copies of these warehouse receipts to Schenley?

A. Oh, it would go back to his desk, first. I wouldn't send it out directly together.

Q. Well, he just asked you to turn over the copies to him and you don't know what he did with it, is that right?      A. No.

(Testimony of Helen Husted.)

Q. Well, what is——

The Referee: What's the answer?

The Witness: No. [1522]

Q. What is the answer.

A. If Schenley's made the request for an extra copy and it was right for them to have it, then that's probably where it went.

Q. But you don't recall Mr. McMains or anyone ever telling you to turn over any copies to anyone, is that right?      A. No, sir.

Q. You do not.      A. No, sir.

Q. But you do recall that on occasions you turned over copies to Mr. McMains, is that right?

A. Yes, sir.

Q. You don't know what he did with the copies nor why he asked for them, do you?

A. Not actually, but if he had a request for the copies from Schenley as we would assume under the circumstances where the receipt was made to Schenley in the first place.

Mr. Fisk: I ask that the last part go out.

The Referee: That may go out—the last part.

By the Referee: Q. Mrs. Husted, the fact is on some occasions you turned over one of the copies to Mr. McMains, isn't that true?

A. Yes, sir.

Q. As far as your assumption is concerned, we're not interested.

A. I'm sorry. I didn't mean to use the word.

Q. And from then on, as to what he actually

(Testimony of Helen Husted.)

did with it of your own knowledge, do you know?

A. No. [1523]

By Mr. Fisk: Q. Now, did you ever take these warehouse receipt books, or any of them, out of the vault and show them to anyone other than Mr. McMains? A. No, sir.

Q. Now, did you handle the Franciscan warehouse receipt books? A. Yes.

Q. In exactly the same manner as you handled the Hedgeside?

A. There are only two copies of the Franciscan receipts.

The Referee: You mean an original and a copy?

The Witness: Yes, sir.

Q. Original and one copy. A. Yes, sir.

Q. There is no extra copy. A. Yes, sir.

Q. The stubs you never filled out in any instances, is that right?

A. No, they were never used.

Q. Either the stubs that were attached to the pledge or the two copies.

A. They were never used.

Q. Were the copies ever signed?

A. Not that I know of.

Q. In other words, you just typed the original and the two copies and then the ones—the copies that were replaced, you replaced without any signatures or anything further being done to them other than the typing, is that right?

A. Yes, sir.

Q. Did you have anything to do with replacing

(Testimony of Helen Husted.)

the original when it was returned to Hedgeside?

A. Yes, sir. [1524]

Q. Will you tell us, mechanically, how you handled that event?

A. Well, they came to my desk from Mr. McMains. They were either cancelled out or one of the signatures torn out—voided, and they were put in the book where they belonged with scotch tape.

Q. In other words, you would receive the original from Mr. McMains. A. Yes, sir.

Q. And when you received the original, its condition was that it was either cancelled out or a portion of the signature torn off. A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Now, what physical act had taken place with regard to the original which you referred to as cancelled out?

A. Well, perhaps Mr. McMains had written “cancelled” across the face of it.

Q. Well, you say “perhaps.” Is that your recollection that he did that?

A. Or he occasionally used a stamp too.

Q. Is that a rubber stamp? A. Yes.

Q. With the word “cancelled” written on it?

A. Uh-huh.

The Referee: Don't—

The Witness: Excuse me. I'm sorry. Excuse me.

Q. At any rate, the original warehouse receipt would be handed to you by Mr. McMains with those changes made on the face [1525] of it.

A. Yes, sir.

(Testimony of Helen Husted.)

Q. And you would then do what with it?

A. Re-insert it in the book at the proper number.

Q. With scotch tape? A. Yes, sir.

Q. Now, what did you do where there was a partial withdrawal?

A. Oh, those didn't come to me.

Q. In other words, take the case where an original warehouse receipt had been issued to me for a hundred barrels of spirits and then later I came in and withdrew fifty barrels, you don't know what was done with respect to that original warehouse receipt?

A. No, sir, that did not come to me.

Q. Well, my question is: Do you know what was done in that instance?

A. No, sir.

Q. You do not. A. No, sir.

Q. Well, now, do you recall on the occasion of your testifying here last you referred to the signature and the handwriting, or I believe the initials and the handwriting of Mr. McMains on the back of one of the warehouse receipts which had to do with partial cancellation?

A. Yes, sir.

Q. You have no personal knowledge of what took place there. You were simply identifying his handwriting, is that right?

A. That's right.

Q. You know nothing about the practice of Hedgeside in that regard.

A. No, sir.

The Referee: Mr. Fisk—recess? [1526]

Mr. Fisk: May I ask just one or two more on this?

Q. You did not replace the original of that



(Testimony of Helen Husted.)

warehouse receipt in the warehouse receipt book and issue a new one, did you?

A. I don't think that's the procedure.

Q. No, I am asking you if you did. I am asking you by your recollection if you did.

A. No.

Q. Your recollection is that you did not.

A. No.

Q. Now, these warehouse receipt books were available to you at all times, were they not?

A. Yes, sir.

Q. Do you recall any instances where that was done by anyone?

A. No, sir. You're talking about receipts on where there have been partial withdrawals.

A. That is right.

A. No, sir.

Q. In other words, there was no indication made in that book, the warehouse receipt book, that there had been any partial withdrawals?

A. No, sir, there is no record in the book that indicates that.

Q. In other words, whenever there was a partial withdrawal, nothing took place with respect to the warehouse receipt books or the copies in it whatsoever, is that right?

A. No, sir.

Mr. Fisk: That's all for the time being. [1527]

The Referee: Recess.

Mr. Fisk: I'm not finished with the witness.

(A brief recess was taken.)

The Referee: Very well, Mr. Fisk. You may proceed.

(Testimony of Helen Husted.)

Q. You mentioned Miss Wilcox as being a payroll clerk at one time for Franciscan?

A. Yes, sir.

Q. And that is the young lady who testified here in this case? A. Yes, sir.

Q. And did she have a place of business at Hedgeside—the same place as you did?

A. Yes, sir.

Q. It's Mrs.—not Miss, is that right?

A. Mrs. Wilcox.

Q. Her husband, was he an employee of Hedgeside? A. Before they were married.

Q. He wasn't an employee of Hedgeside after they were married?

A. I don't believe so, Mr. Fisk; I've forgotten just when he went off.

Q. What position did he hold with Hedgeside?

Mr. La Shelle: Your Honor, I fail to see—

The Referee: I don't even know.

Mr. La Shelle: Just a moment, I fail to see the materiality of the employment of Mrs. Wilcox's husband.

The Referee: Mr. Fisk?

Mr. Fisk: The materiality is I want to establish all the relationships and what this witness knows about what took place in connection—between the two [1528] firms—Franciscan and Hedgeside?

By the Referee: Q. Did he work in the office in either place?

A. Yes, sir, he worked for Hedgeside.

Q. In the office? A. Yes, sir.

(Testimony of Helen Husted.)

The Referee: You may answer. The objection is overruled.

By Mr. Fisk: Q. He was on the board of directors of Hedgeside, was he not?

A. Oh, I don't know that.

Q. Was he connected with Glaser Bros.?

A. I don't know that either.

Q. On each transaction, was there more than one warehouse receipt kept by Hedgeside — one warehouse receipt book kept by Hedgeside?

A. Not that I know of, Mr. Fisk.

Q. In other words, as to each transaction, that original warehouse receipt and the two copies were the only record that they had on the transaction, is that right? A. So far as I know.

Q. Were there any other copies made of the transaction except the two copies that you just testified with respect to?

A. Well, Mr. Fisk, now just when we were out for recess, I took a look at the letters of transmittal that have gone with the warehouse receipts and it shows that there were two copies of those receipts for which requests were made. It shows that [1529] two copies, in addition to the original, went to Schenley's.

Q. In other words——

A. So now may I explain to you how it happened? They got the original——

Q. Well, now wait just a minute. I don't think——

Mr. La Shelle: Just a moment, I think the witness can explain her answer.

(Testimony of Helen Husted.)

The Referee: Pardon me, Mr. Fisk. First of all, Mrs. Husted, you answer Mr. Fisk's present question and then I will permit you to clarify and explain your former answer.

Mr. Fisk: Well, then, may the last answer go out as not responsive to my question?

The Referee: So ordered.

The Witness: Now, will you read the question back again?

(The last question was read by the Reporter.)

A. Only in those instances which I want to tell you about.

Q. In other words, there were instances where the copies were made other than the two copies which went with the original warehouse receipt, is that right?

A. Yes, in these that I want to tell you about.

Q. All right, now what were the instances where there was a third copy made?

A. Mr. Fisk, in the letter of transmittal that goes with certain of these warehouse receipts, it shows that there were [1530] two copies sent to Schenley in addition to the original and those are those eleven or twelve or whatever it may be, because each letter of transmittal indicates that the extra copies were sent in those instances. Now, the one that went is the one that is missing or the two that went and the one that is missing out of the book, plus the information which went on a plain white sheet which made the second extra copy. Do I make it clear?

(Testimony of Helen Husted.)

Q. Well, I don't know that I understand it. Let me see if I do. In the eleven or twelve instances that you referred to with respect to the transactions with Schenley, there was made out by you an original warehouse receipt and two copies. Was there a third copy made out?

A. Plus a white one.

Q. Plus a white copy. A. That's right.

Q. Now, what was the form of the white copy?

A. It was just an 8½ by 10 sheet of paper.

Q. Just a letter sheet. A. That's right.

Q. And what was done with that?

A. That made the second copy. The second extra copy that had been requested.

Mr. Fisk: Well, I ask that that answer go out as not responsive.

The Referee: What happened?

Q. What was done with this white copy—this third copy which is on a letter sheet? [1531]

A. That and the pink or yellow one, whichever it is, that's missing and the original were put on Mr. McMains desk—the original for his signature and the disposition from then on.

Q. And you don't know what became of it after that? I'm talking about the letter-sized white copy.

A. It accompanied the letter and the other two copies which were transmitted with the letter.

Q. You made out the original and two yellow copies and the third white copy which was on a letter-sized sheet?

(Testimony of Helen Husted.)

Mr. La Shelle: I don't think they were both yellow; they were pink and yellow.

Q. Pink and yellow. You made out the original and the pink and yellow copy?

A. Uh-huh.

Q. And the white copy which was on a letter-sized sheet.

A. Uh-huh, that's right.

Q. Did all three of those copies, together with the original, go to Schenley?

A. No, sir.

Q. Did any of the copies—the three copies—remain at Hedgeside?

A. Yes, the one that's in the book.

Q. Which is which color?

A. Probably the pink one, as I recall. It's the yellow ones that are out. I'd have to look at the book to be sure.

Mr. Fisk: Your Honor, I would like to have the book, if I may.

The Referee: Surely. [1532]

(Discussion off the record.)

Q. Now, Mrs. Husted, I show you Petitioner's Exhibit No. 59, which is a warehouse receipt book containing, or which contained originally, warehouse receipt No. 3665-B, together with the two copies—the yellow and a pink copy. Now, is there an original of warehouse receipt 3665-B in that book?

A. No, sir.

Q. Is there a yellow copy?

A. No, sir.

Q. Is there a pink copy?

A. Yes, sir.

Q. Now, on the white stub, which is the stub for the original, is there any typing or writing or does

(Testimony of Helen Husted.)

anything appear there except the printed heading?

A. No, sir.

Q. And on the yellow stub there isn't anything even printed there?      A. No, sir.

Q. And on the pink stub, what appears?

A. Just the printed information as is on the original.

Q. The same as on the original.

A. Uh-huh.

Mr. La Shelle: The original stub, you mean.

The Witness: The original stub, yes.

Q. That form is followed in all of the stubs in these various warehouse receipts.

A. Uh-huh.

The Referee: Yes, Mr. Husted?

The Witness: Excuse me—yes.

Q. Prior to the time that the pink copy was returned to the book, there was no way to tell what number those three stubs had reference to, was there? [1533]

Mr. La Shelle: Now, just a moment. I think we're getting into testimony—the evidence speaks for itself, your Honor, rather than have the witness interpret or read—

Mr. Fisk: I think it does from examining the book, but I am just following the continuity. It is preliminary to what I am going to—

The Referee: She may answer. You may answer, Mrs. Husted.

A. The pink copy was put in immediately after it was typed.

(Testimony of Helen Husted.)

Q. No, but prior to the time they put in the pink copy there isn't anything on those three stubs that would indicate that they referred to warehouse receipt 3665-B, is there?

A. No, but there was no appreciable length of time that elapsed.

Q. Now, do you know why nothing appears on the yellow stub? A. No, sir, I do not.

Q. There is no printed matter at all.

A. No, sir.

Q. You never formed a practice, however, of filling out the pink stub. A. No, sir.

Q. Or the white stub. A. No, sir.

Q. Did you have a practice of returning to the book the pink copy and not the yellow copy?

A. No, sir.

Q. You didn't have that practice?

A. No, sir.

Q. But in this particular instance and in others in the case of Schenley, you did follow that practice, is that right? [1534]

A. For the period that the procedure was set up.

Q. And what period was that?

A. I don't know. I would have to have the correspondence file to check.

Mr. La Shelle: Will you talk a little bit louder?

Q. Who set up the special procedure that you have reference to?

A. The client, I would assume, had set up the procedure in the first instance.

Q. In other words, in this particular instance



(Testimony of Helen Husted.)

that you have reference to as indicated by warehouse receipt 3665, Schenley set up the practice.

A. We have to go back to the correspondence, but I think you will find that's so.

Q. Did you receive your instructions from Schenley or did you receive them from someone else? A. Mr. McMains gave them to me.

Q. And he gave you specific instructions to handle that particular transaction in the way it was handled? A. That's right, sir.

Q. And he also gave you specific instructions to handle some ten or eleven others in a similar manner. A. Yes, sir.

Q. Were there any instances that you recall where that procedure was followed except those eleven or twelve? A. No, sir.

The Referee: Mr. Fisk, how much more time do you [1535] think you will take with Mrs. Husted?

Mr. Fisk: Not a great deal longer.

The Referee: It's a couple of minutes to twelve. I was wondering whether or not this would seem like you had reached a good dividing point.

Mr. Fisk: I have. May I ask two questions?

Q. Attached to Petitioner's Exhibit—I don't recall the number——

The Referee: 53, Mr. Fisk.

Mr. La Shelle: 53—part of 53.

Q. (Continuing): which has contained within it, warehouse receipt 3665-B, there is an original letter purporting to be from Hedgeside to Schenley dated December 2, 1948 and in the second paragraph of

(Testimony of Helen Husted.)

that letter, the following statement appears: "Yesterday, 100 barrels Hedgeside production, S/N 71852 to 71951, were moved down, and we are accordingly enclosing herewith our Non-negotiable Warehouse Receipt No. 3665 (with two copies) to cover." Now, did you type that letter?

A. If the initials on the bottom say "WSMH" I did.

Q. Indicating. A. Yes, sir, I did.

Q. And did you mail it?

A. I wouldn't know what—I don't know that I personally mailed this particular letter.

Q. You don't know whether there were any enclosures that went out with the letter or not of your own personal knowledge, do you?

A. No, at this time I couldn't say. [1536]

Q. Well, did you in the regular course of business, mail out these letters for Hedgeside?

A. Yes, sir.

Q. But you have no recollection as to whether or what enclosures there were with that letter when it went out? A. Not that particular letter.

Q. So you don't know what copies are referred to by Mr. McMains when he speaks of "with two copies" in that paragraph.

A. Yes; the yellow one and the white one.

Q. Well, if you have no present recollection on what went out with this, how can you say that?

A. Well, that's the copies he refers to in that letter.

(Testimony of Helen Husted.)

Q. Well, do you have any personal knowledge of what enclosures went out with that letter?

A. Not at that time, Mr. Fisk. It's too long.

Q. Then you don't know what two copies he's referring to.

Mr. La Shelle: Just a moment, we object to that as being argumentative, your Honor. She stated that that was the practice. Naturally, at this date she can't say what went out on a given letter; no one can say. But that was the practice.

Mr. Fisk: I don't think the witness has testified to that, your Honor.

The Referee: She may answer.

A. The procedure was for the copies mentioned in the letter to accompany the letter. I don't know whether they were with that particular letter or not now. [1537]

Q. The practice of Hedgeside was when the letter mentioned copies, the copies would be enclosed, is that correct?      A. That's right.

Q. But you don't know what copies are referred to in this particular letter because you don't know what copies went out with the letter, isn't that true?

A. I don't know what copies went out with the letter but the copies, the yellow and the white and the original, should have been with the letter.

Q. And you say that because you know, you recall that that was a practice adopted by Hedgeside at that time, is that right?      A. Yes, sir.

Q. Now, on December 2, 1948, how long had that practice been in effect?

(Testimony of Helen Husted.)

A. I don't know exactly, Mr. Fisk, but I think the first paragraph of the letter helps.

Q. Well, in other words, then it really wasn't a practice; it was an exception that was adopted on that occasion, isn't that true?

A. No, because it had continued for a little while. You see——

Q. All right. Looking at that letter, now, refresh your recollection as to how long that practice had been in effect.

A. All right. It says here: "We have now started transfer of your goods from IRBW 111 at Yountville to our IRBW 2. This is in accord with our letter of November 27, 1948." So the [1538] procedure was set up in that letter of November 27.

Q. Well, was this procedure only adopted in connection with the transfer of these goods from Franciscan's warehouse over to Hedgeside's warehouse? Is that the only occasion when that was done?

A. I don't know but that's what it looks like.

Q. Well, you don't know of your own knowledge.

A. No.

Q. You know nothing about whether or not that procedure had been previously used or not.

A. It hadn't been previously used.

Mr. Fisk: Your Honor, I guess I don't want to hold it up. I would like to finish, however, even this phase of it.

The Referee: Gentlemen, Mr. Walsh has in-

(Testimony of Helen Husted.)

formed me that it will be impossible for him to go on tomorrow morning.

Mr. Fisk: Your Honor, I called Mr. La Shelle and said it would be impossible for me to go on.

(Discussion off the record.)

Afternoon Session—2:00 o'clock p.m.

Cross-Examination—(Continued)

Mr. Fisk: Q. Mrs. Husted, still referring to warehouse receipt 3665-B, according to your best recollection, you made only three copies, is [1539] that right?

A. No, I'm not certain. On occasion there had been maybe another one or two.

Q. In other words, it is now your testimony that you may have made an original and four copies?

A. Yes, sir, I may have.

Q. On what do you base your recollection when you make that statement?

A. Well, I looked at that letter again and I see that there is another copy.

Q. You are now looking at the same letter I take it.

A. You and I are looking at the same letter. (Laughter) It says I did, doesn't it?

Q. In the third paragraph of that letter, which reads as follows: "In compliance with a request (and this is the letter of December 2, 1948 from Hedgeside to Schenley)—"in compliance with a request from Mr. Covert, we are sending him a copy of the warehouse receipt, together with copies of

(Testimony of Helen Husted.)

the bill of lading and a copy of this letter." Now, this letter is addressed to Mr. Baglin, is that right?

A. Yes, sir.

Q. And at the bottom it is indicated that a copy of this letter went to Mr. Covert?

A. Yes, sir.

Q. So that it is your testimony now that in addition to the original and two copies that went to Mr. Baglin, there was still another copy that went to Mr. Covert.

A. Yes.

Q. Is that correct? A. Yes. [1540]

Q. Do you have any independent recollection on that or did you just read this paragraph at the noon hour and figure that that was the only way your testimony could be reconciled, is that right?

A. No, sir. I'm just recalling again this letter would indicate that there was another copy, too. I don't remember whether we made four—exactly whether we made four or three, but the letter would indicate that there were four.

Q. Well, now, you look at the letter and tell me the basis of your statement that it would indicate there were four copies instead of three.

A. Well, the original is—it says here that with the non-negotiable warehouse receipt number so and so is here. That takes the two copies.

Q. It doesn't say what the two copies are though, does it? A. No.

Q. So that the two copies that are referred to could be the yellow and pink then as far as that letter is concerned.

A. No, sir.

(Testimony of Helen Husted.)

Q. Isn't that correct?

A. No, sir, it could not be, no, sir; the pink copy is in the file.

Q. And what is there in that letter that would indicate to you that the yellow and the pink copy were not sent with the original?

Mr. La Shelle: Your Honor, I object to that as argumentative. [1541] The letter speaks for itself. The pink remaining in the books speaks for itself and they're in evidence.

The Referee: The objection is overruled. The letter does not speak for itself. It says copies. You may answer, Mrs. Husted.

A. Well, there is nothing in the letter that indicates which copies went.

Q. In other words, from looking at the letter, there is nothing there to indicate but that there were three copies made, is that right?

A. Four here.

The Referee: Did you understand Mr. Fisk's question?

The Witness: Well, he says three copies but there were four.

The Referee: But I want you to hear the question.

(The last question was read by the Reporter.)

Q. Only three copies made.

A. No, it isn't right.

Q. You don't agree with it.           A. No.

Q. All right, now, you refer me to the statements

(Testimony of Helen Husted.)

in that letter that indicate that four copies were made instead of three.

A. All right. It says "enclosing herewith are non-negotiable warehouse receipt No. 3665" (that's the original); in brackets "(with two copies) to cover." Those go to Mr. Baglin. [1542] Then the next paragraph says: "In compliance with the request from Mr. Covert, we are sending him a copy of the warehouse receipt."

Q. Now, what is there in that letter to indicate that the two copies that went with the original to Mr. Baglin were not the yellow and pink copy?

A. There is nothing in the letter.

Q. All right. The third copy you said was on a white, plain letter sheet, is that right?

A. Yes, sir.

Q. And so was the fourth copy.

A. The fourth copy too.

Q. Was there a fifth copy?

A. I think not.

Q. You're not sure though.

A. No, not at this stage I can't be.

Q. Now, how did you make up those copies?

A. Original and then the carbons.

Q. You used carbon paper? A. Uh-huh.

Q. And——

The Referee: Pardon me, Mr. Fisk. Had you finished your answer?

The Witness: Well, I could add a little bit to it.

The Referee: Well, you finish your answer.

A. (Continuing): You see, Mr. Fisk, we didn't



(Testimony of Helen Husted.)

have any other just printed—with the printed name on it, so we had to substitute just plain, white sheets of paper and, of course, when you turn a letter-size sheet of paper to use it from top to [1543] bottom, makes it easier crosswise, is just the size of the warehouse receipt, so it worked out pretty nicely.

Q. In other words, these warehouse receipts, the portion that you tear off, is approximately  $8\frac{1}{2}$  by 11, is that right?      A. Yes,  $8\frac{1}{2}$  by 11.

Q. All  $8\frac{1}{2}$  by 11.

A. Yes, I think is standard.

Q. In other words, you used, in making these up, you took the original and you used the pink copy and the yellow copy and two white ones and the plain, white letter sheet.

A. That's right, sir.

Q. And four pieces of carbon paper.

A. Uh-huh.

Q. Is that right?      A. Uh-huh.

The Referee: Yes or no. Is that right?

Mr. La Shelle: She's trying to figure it out.

The Referee: Yes, but she shook her head and the court reporter doesn't get that weaving and bobbing.

The Witness: Sure.

Q. That's right.      A. Sure.

Q. You're sure of that.

A. Sure. Four pieces of carbon to make five copies.

Q. And that's your best recollection.

A. Yes.

(Testimony of Helen Husted.)

Q. Now, I show you Petitioner's Exhibit 59 and the pink copy No. 3665-B and ask you to read into the record what you typed on that sheet.

Mr. La Shelle: Well, your Honor, again I object to this and I voice the objection that Mr. Fisk has made [1544] when I have asked somewhat similar questions. The book is in evidence and what is printed and what is typed can be seen; it doesn't need the aid or interpretation of the witness.

The Referee: He didn't say that, Mr. La Shelle; he just asked the witness to read into the record the part that she typed on that particular page. Now, that's all she's got to say. If she didn't type any, she can say "nothing"; if she typed certain words, she can testify. Did you understand Mr. Fisk's question?

The Witness: What I typed.

The Referee: Well, the answer of what you typed on there.

A. The date, December 1, 1948, Schenley Distillers Corporation, 850 Battery Street, San Francisco, California; the word "whiskey" is crossed out.

Q. The word "whiskey" is printed though.

A. Yes.

Q. And you have got some typewritten X's, is that right?

A. Yes, to strike it out. The Mountain View IRBW 111, 100 barrels spirits grain produced by Hedgeside Distillery Corporation S/N 71852-71951, 5,108.88 OPG.

Q. Then some dashes?

(Testimony of Helen Husted.)

A. Yes, to fill out the line. Then down in the lower part of the receipt there's a place for storage and the typewritten material is .10 per bbl, then the word "per" is printed; then typewritten "month."

Q. But you didn't type the word "per."

A. No.

Q. You just wrote the word "month."

A. That's right, sir.

Q. The word "from" is printed; you didn't type that either.

A. No, sir. Typed the word "date."

Q. Now, that's all that you typed, is that right?

A. No, here is another line.

Q. All right.

A. The word "handling" is printed.

Q. And you didn't type that.

A. No, sir. And then I did type .25. The word "per" is printed and I didn't type it; bbl is typewritten.

Q. Now, that's all that you typed, is that right?

A. Uh-huh.

Q. And that's all that was on these two white copies.

A. Yes, sir.

Q. And that's all that went to Mr. Covert.

A. No, the letter says there is other material that went to Mr. Covert.

Q. Well, I mean as far as the copy of the warehouse receipt is concerned.

A. Yes, sir.

Q. Do you know where those two white copies are now?

A. Oh, no.

Q. Do you have the receipts?

A. No, sir.

(Testimony of Helen Husted.)

Q. And as a matter of fact, you don't know whether they [1546] ever were delivered or not, do you?      A. Naturally not.

Q. Do you know what the purpose was of sending that white copy to Mr. Covert?

A. No, except that he requested it.

Q. Well, do you know that he requested it of your own knowledge?

A. I think the letter says that he requested it.

Q. You are referring to the third paragraph of the letter of December 2, '48.      A. Yes, sir.

Q. That's the only knowledge you have with regard to it.      A. Yes, sir.

Q. And do you know why the third white copy went to Mr. Baglin in addition to the yellow copy?

A. No, sir.

Q. Nor do you know what he did with it.

A. No, sir.

Q. And you don't have any recollection—any personal recollection at the present time as to when this pink copy was replaced in the books, do you? I am talking about your present personal recollection.

A. Well, the procedure was to put it in immediately after it was typed.

Mr. Fisk: I ask that the answer go out.

The Referee: So ordered.

A. I do not.

Q. You do not. Is that your answer?

A. (Witness nods affirmatively.) Yes, sir. [1547]

Q. What was the maximum combined salary that

(Testimony of Helen Husted.)

you received at any one time from Hedgeside and Franciscan per month?

A. Two Hundred and Fifty Dollars.

Q. And at the time you received a total of \$250 from the two institutions, how much did you receive from Franciscan and how much from Hedgeside?

A. I believe the split was \$200 from Hedgeside and \$50 from Franciscan. The payroll record would show.

Q. At one time it was Twenty-five from Franciscan and One Hundred and Seventy-five from Hedgeside.

A. Yes, sir.

Q. Beside keeping the warehouse receipt books of Franciscan, what other services did you render Franciscan?

A. I did the stenographic services for them, made out the water bills and government correspondence. That's about all.

Q. What did you do for Hedgeside?

A. Oh, I did all the stenographic work for Hedgeside.

Q. And did you do all the stenographic work for Franciscan?

A. Yes.

Q. And what else did you do for Hedgeside?

A. Well, there were five men in the Hedgeside office, you see, and I did the stenographic work—the clerical work too, as a matter of fact, for all of them.

Q. How many men were there at Napa connected with Franciscan?

A. Well, only Mr. Stone.

(Testimony of Helen Husted.)

Q. Mr. McMains had nothing to do with Franciscan?

A. With Franciscan? No, that isn't right. He did some [1548] things for Franciscan.

Q. Did Mr. Logan have anything to do with Franciscan? A. He was an officer.

Q. Well, was he an officer of Hedgeside?

A. Yes.

Q. Was Mr. McMains an officer of Hedgeside?

A. Yes.

Q. Well, didn't you have the same—What about Mr. Roberts, was he connected with Franciscan?

A. For a little while.

Q. Was he connected with Hedgeside?

A. Yes, sir.

Q. Well, didn't you have all five men that were connected with Hedgeside also connected with Franciscan?

A. No, not at the same time. I mean, they're separate, you know.

Q. Wasn't Stone at all times connected with both Hedgeside and Franciscan while you were there? A. Yes, that's right.

Q. And wasn't Logan in the same position?

A. Yes, that's right, too, but Mr. Logan wasn't active in Franciscan. I mean, active, you know, about Mr. Logan as being with Franciscan.

Q. Didn't you just testify the other day that he signed some of the warehouse receipts?

A. Yes, sir.

Q. Then he was active, is that right?

(Testimony of Helen Husted.)

A. Yes, but not—the balance of his attention was in Hedgeside—most of it was for Hedgeside.

Q. Now, Mr. McMains, wasn't he active with Franciscan?

A. Yes, he was active with them, but the activity in [1549] Franciscan was somewhat compared to the activity in Hedgeside.

Q. Was there anybody in the office there at Hedgeside that didn't do work for Franciscan?

A. Yes.

Q. Who?

A. The person who kept the Hedgeside government records when we had a government record clerk and the——

Q. Well, wasn't that you—didn't you do that?

A. No, sir, I did not.

Q. At no time did you keep at Hedgeside, the government records?

A. No, sir, not those daily reports.

Q. Didn't you just a few minutes ago testify that you kept some of Hedgeside's government records?

A. No, not Hedgeside—not the daily and monthly production records.

Q. Never did you keep any of those records?

A. No, sir.

Q. For either Franciscan or Hedgeside?

A. No, sir.

Q. Well, now, what is today the last person you have reference to?

A. We at one time had a man who did nothing

(Testimony of Helen Husted.)

but the daily and monthly government production records—warehouse records.

Q. What was his name?

A. Robert Benning.

Q. And he did nothing but the government records for Hedgeside.           A. Hedgeside.

Mr. La Shelle: Just a moment, your Honor. I fail [1550] to see the materiality of this or that it is proper cross-examination.

The Referee: Well, Mr. La Shelle, I'm just anticipating that Mr. Fisk is trying to see that the same employees were with Hedgeside that were with Franciscan.

Mr. La Shelle: What has that got to do with this case?

Mr. Fisk: It has got a lot to do with it.

The Referee: Well, I have an idea as far as the law point is concerned, when the briefs are filed, but at the moment I certainly am not going to preclude Mr. Fisk from getting an answer.

Mr. La Shelle: There is no affirmative defense pleaded or alter ego.

The Referee: That's still a law point.

Mr. La Shelle: But the law point is clear; it's got to be pleaded.

The Referee: You're still entitled to, when eventually the Court makes an order, you're entitled to review my decision and so is Mr. Fisk and so is Mr. Walsh, but certainly, I am not going to shut out any testimony.

Mr. La Shelle: Well, the rule is, your Honor, as



(Testimony of Helen Husted.)

pointed out before, if they plead it, then they can go along those lines, but here they're not pleading it and they're not pleading it for a very good reason, [1551] because they know if it's once brought out in the open——

The Referee: Well, then you can find the Court in error in permitting the witness to answer. The objection is overruled.

Mr. La Shelle: Well, as a matter of fact, I think we did have a stipulation at one time that objections to that line of testimony could be reserved. It's all right if that applies, but I don't want to have any implication in this record that I have waived any objections to the various objections and motions that have been made in this case that the bank and the trustee have no right to go into any alter ego defense in view of the fact that they have not pleaded it as an affirmative defense.

The Referee: As far as the Court is concerned, whether you had a stipulation along those lines or not, you can always point out that the Court was in error in permitting the witness to answer those questions, even if you had the stipulation.

Mr. La Shelle: Well, I doubt if I have that right if I haven't objected.

The Referee: Well, your objection has been made and the Court overruled the objection.

Mr. La Shelle: Well, then, may it be understood so that I don't take up a lot of time, that any question along those lines may be deemed to be objected to, either [1552] that or I am going to object to

(Testimony of Helen Husted.)

every question from here to Christmas and I am not going to waive anything along those lines and I want the record to be abundantly clear on that point.

Mr. Fisk: If the Court please, we have argued at great length and even briefed it to the Court and counsel the question of the affirmative defense and the Court has ruled on it and Schenley has argued that they have certain rights based on the Heaven Hill whiskey that came through a chain of title that may not be, in my opinion, established and as I understand arguments of counsel, he must establish it or he has a burden of proof and any witness put in the proof in order to establish it and I submit that there are questions raised here with regard to that question under 3440 and other provisions which would permit us to go into that question and I doubt that chain of title and we are not required to do it by way of affirmative defense and in addition to that, we do have an affirmative defense and so does the trustee.

The Referee: And in addition to that, the Court has ruled.

Mr. Fisk: That's correct.

The Referee: You may have an answer to your question.

Mr. La Shelle: Well, I take it that I'll have to object to each question to preserve my record because [1553] they do not care to join in that stipulation.

Mr. Fisk: I don't know what the stipulation is. We had the stipulation and the Court ruled on it.

(Testimony of Helen Husted.)

Mr. La Shelle: Yes, but it has been months since the stipulation was made and I want it to be very clear it will apply to this witness as well as the witness that was on the stand while that stipulation was made. We are not giving anything up by it.

Mr. Fisk: Your Honor, I have no idea of taking up the time of the Court by forcing counsel to make a lot of unnecessary or repetitious objections. On the other hand, I don't want to stipulate with counsel that—

Mr. La Shelle: Today is Monday, or Tuesday.

Mr. Fisk (Continuing): —that he's got to make an objection to everything that conceivably might give rise to error in this proceeding regardless of whether he has objected to it or not. It seems to me his position on that question is clear and if it's a question of—our position is clear and if it's a question of his objecting to a particular line of questions at a particular time, I'm perfectly willing to stipulate, but just to put in a blank stipulation that any objection he could have made at any time in this proceeding, I don't think that should be asked.

Mr. La Shelle: I asked that any testimony utilized for the alter ego defense be deemed objected to.

Mr. Fisk: That's your statement—that this is limited to alter ego.

The Referee: Now, wait a minute, gentlemen. Give the court reporter a break, too.

Mr. La Shelle: Mr. Fisk, I really did not expect the stipulation. I'll make my objections from here until Christmas. That's what we're going to

(Testimony of Helen Husted.)

do because I am not going to waive that and you are trying to jockey me into a position of waiving a right and I am not going to do it.

Mr. Fisk: I am not trying to jockey you because I don't think I could if I tried, so I'm willing to proceed.

The Referee: The Court has overruled Mr. La Shelle's objection.

(The last question was read by the Reporter.)

Q. He did nothing but government records, is that right?

Mr. La Shelle: We object to that, your Honor, upon the grounds it is incompetent, irrelevant and immaterial and not covered by the pleadings in this case and that it tends to invoke the alter ego defense without it having been affirmatively pleaded.

The Referee: Overruled.

A. He had other duties, Mr. Fisk, but I can't give them in detail at this time.

Q. He performed work for both Hedgeside and Franciscan, [1555] did he not? A. No, sir.

Mr. La Shelle: Just a moment. Wait a minute. I move to strike out the answer subject to making an objection, your Honor.

The Referee: Overruled.

Mr. La Shelle: Well, can't I even have the objection?

The Referee: I say, your objection has been made and I have overruled your objection.

Mr. La Shelle: I made a motion to strike out

(Testimony of Helen Husted.)

the answer so I could get the objection in. She answered before I could object.

The Referee: Very well.

Mr. La Shelle: We make the same objection as heretofore noted, your Honor.

The Referee: And the same ruling. Now, do you want the former answer to stand or if you want to answer over, you may have your choice.

A. No, sir.

Q. Didn't you testify this morning that he received compensation both from Hedgeside and Franciscan?

Mr. La Shelle: We make the same objection, your Honor.

The Referee: Same ruling.

A. I think I'm the only person who appeared on both of those payrolls in that particular manner.

Q. Didn't you testify this morning that Mr. Benning received compensation from both Hedgeside and Franciscan?

A. No, sir.

Mr. La Shelle: Please! We move to strike out the answer, your Honor, until we get an objection in.

The Referee: And you make the same objection.

Mr. La Shelle: Please, will you wait; on every single one of these questions is probably going to be objected to.

The Witness: All right, Mr. La Shelle.

Mr. La Shelle: We make the same objection.

The Referee: Same ruling. Overruled. Now, you may answer.

A. No, sir.

(Testimony of Helen Husted.)

Q. According to your present recollection, did he or did he not receive compensation from both Hedgeside and Franciscan?

Mr. La Shelle: Wait a minute. The same objection, your Honor.

The Referee: Same ruling.

A. No, he didn't.

Q. When did you first go on the payroll of Franciscan?

The Referee: Mr. La Shelle, we don't want to shut you out.

Mr. La Shelle: I have no objection.

A. When I went to work?

Q. When you went to work for Franciscan.

A. For Hedgeside.

Q. In other words, you went to work for Hedgeside in 1945 and at the same time that you went on the payroll of Hedgeside, you went on the payroll of Franciscan, is that right?

A. Yes, sir. May I tell you why?

Mr. Fisk: Well, I don't think that's material.

The Referee: Well, as far as the Court is concerned, you may answer the question completely.

A. (Continuing): There was a ceiling on salaries at the time I went up there and you could only hire up to a certain level and my asking salary was above that level so in order to equalize the services and give me what I asked for, I was paid out of both companies.

Q. I see. In other words, when you went to Hedgeside in 1945, they had a ceiling on employing

(Testimony of Helen Husted.)

a person in the category they employed you and they could only pay One Hundred and Seventy-five and you asked more so Mr. Stone arranged for you to get some compensation from Franciscan and some from Hedgeside, is that right?

A. For a certain amount of duties that I was to perform for Franciscan.

Q. I see. Did Mr. McMains keep the books of Hedgeside?           A. Yes, sir.

Q. And he also kept the books of Franciscan?

A. No, sir.

Q. He didn't keep any of the books of Franciscan? [1558]           A. No, sir.

Mr. La Shelle: We make the same objection, your Honor.

The Referee: Overruled.

A. No, sir, their operations are separate. The books are separate; the files are separate.

Mr. Fisk: I ask that that last statement go out as voluntary.

The Referee: That may go out.

Q. When you went with Hedgeside, who was the bookkeeper there at Franciscan?

Mr. La Shelle: We make the same objection, your Honor.

The Referee: Overruled. Mrs. Husted?

A. I'm thinking. I don't really remember right off.

Q. How many bookkeepers did Franciscan have while you were connected with Hedgeside?

(Testimony of Helen Husted.)

Mr. La Shelle: Just a moment. We make the same objection.

The Referee: Overruled.

A. There were four or five just in the time I was there.

Q. Do you remember the names of the book-keepers?

Mr. La Shelle: We make the same objection, your Honor.

The Referee: Same ruling.

A. You're talking about Franciscan. [1559]

Q. That's right.

A. Well, Mrs. Wilcox was the last one. I guess they worked backwards.

Q. When did she——

The Referee: Now, just a minute. Let's have an answer to the question. You said there were four or five. You said "I think they worked backwards" and you named Mrs. Wilcox.

A. And Margaret Corbett.

The Referee: Q. Is that Corbett C-o-r-b-e-t-t?

A. I think so. I think Robert Benning worked on them, too. Then Mrs. Wilcox before him again.

Q. She was there and left and then came back.

A. (Witness nods affirmatively.) I can't remember who was there before her.

Q. Your best recollection now is Wilcox, Benning, Corbett, and Mrs. Wilcox again.

A. Uh-huh.

Q. Is that right? A. Yes, sir.

The Referee: Mr. Fisk?



(Testimony of Helen Husted.)

Mr. Fisk: That's all.

The Referee: Mr. Walsh?

Mr. Walsh: I have no questions, except I want the record to show that I ask that the cross-examination made by Mr. Fisk be considered that of the trustee.

The Referee: Mr. La Shelle? [1560]

Mr. La Shelle: Yes, just a couple of questions here.

#### Redirect Examination

Mr. La Shelle: Q. Have you a recollection as to the practice that you followed in putting back the printed copies of the warehouse receipts in the warehouse receipt books after you typed them up?

A. Well, Mr. La Shelle—

Q. Have you a recollection or haven't you?

A. Yes.

Q. Yes, all right. And what was your practice in putting back the duplicate printed copy, that is, the pink and the yellow slip where you put both of them back or in special instances such as you testified awhile ago where you only put one of them back, how soon after you typed them up did you put them back? A. Immediately.

Mr. La Shelle: That's all.

The Referee: Q. Mrs. Husted, what do you mean by immediately? Does that mean within the hour or within the day or within the next couple of days?

A. No, within a few minutes because after all it

(Testimony of Helen Husted.)

was my duty to keep that file current and those went in immediately afterwards.

Q. There is another question I'd like to ask you. With reference to that letter sheet copy of the warehouse receipt, as I understand it, the pink and the yellow and the original all had certain printed information on them. [1561] A. Yes, sir.

Q. Did the white extra copy that you sent in these eleven or twelve instances that you referred to, have any information other than the carbon copy information that went on—

A. No, sir, they were just plain sheets of paper to start out with.

Q. There was no printed matter.

A. No, sir.

Q. And the only information that went on that completely white sheet was a copy of the information that went on to the pink and the yellow and the original printed forms. A. That's right.

The Referee: Thank you, Mrs. Husted.

#### Recross-Examination

Mr. Fisk: Q. Were any of the copies signed? Were the yellow copies signed?

A. Not that I know of, Mr. Fisk. I would have to check them through to be sure.

Q. And the two letter copies were not signed.

A. No, sir.

Q. You testified in response to Mr. La Shelle's question as to the procedure that you followed—as to your duties with respect to the procedure in re-

(Testimony of Helen Husted.)

placing these copies in the warehouse receipt books and I ask you who assigned your duties in that connection.       A. Mr. McMains.

Q. Mr. McMains.       A. Uh-huh. [1562]

Q. And what did he state to you?

A. Well, I don't know how he put it in the first place.

Q. Well, you were keeper, so to speak, of these warehouse receipt books, were you not?

A. As they were considered file material, yes.

Q. And——

The Referee: Just a minute, Mr. Fisk. So the record will be clear, this witness previously testified that the warehouse receipt books were in the safe and that she did not have the combination, so we must be fair with the witness.

Q. Do you recall the testimony that the Court has just referred to that you gave this morning?

A. Yes.

Q. Now, will you state to the Court as nearly as you can recall what your duties were with respect to these warehouse receipt books?

A. Well, I prepared the warehouse receipts with the number of copies that were necessary and after I had finished that and taken the original and whatever copies Mr. McMains needed and given them to him, I inserted the file copy or copies, whichever it might be, in the book, put them in there with scotch tape and then took the book and put it back in the vault.

(Testimony of Helen Husted.)

Q. Now, did you have any other duties with respect to the warehouse receipt books whatsoever?

A. No, sir.

Q. And you performed all of those duties on the express instructions of Mr. McMains?

A. Yes, sir. [1563]

Q. Did you have charge of the filing of these warehouse receipt books in the safe or the vault?

A. Yes, sir.

Q. And if anyone came there and wanted to see these books, did you handle that?

A. Yes, sir, I went to get them if the request was made of me.

Q. And you received your instructions in that regard from Mr. McMains?

A. Yes, sir, if he wanted them, yes, sir.

Q. And what were his instructions specifically?

A. Well, if he wanted any particular—the copy of a particular warehouse receipt he would say “I would like the copy of that particular receipt.”

Q. In other words, he would do that, is that right?

A. He would ask me to get it for him.

Q. I see. And you would only get it upon his request.

A. That's right.

Q. And the only instances in which he ever requested it of you were these eleven or twelve instances in the case of Schenley.

A. Oh, no. He might want some other receipt that went in those books.

Q. Well, then there were other instances besides

(Testimony of Helen Husted.)

the Schenley instance when you removed copies from the book, is that right?

A. No, that isn't what you asked me before.

Q. Well, I am asking you that now. Were there other instances besides the eleven or twelve instances in the case of Schenley where on the request of Mr. McMains you removed copies from the book?

A. Oh, I don't know about that now. There may have been instances.

Q. In other words, there may have been other instances where copies were taken out of the book other than the Schenley instances, is that right?

A. Perhaps so. Perhaps so.

Q. You say "perhaps so." Do you have any recollection one way or the other now on the circumstances?

A. No, sir, not at the moment.

Q. If I said to you that there are many copies missing from the various warehouse receipt books of the Hedgeside Distillery Corporation, would that in any way affect your testimony or your recollection?

Mr. La Shelle: Just a moment, we object to that on the grounds it's improper cross-examination if there was something, why then what would your answer be.

The Referee: Sustained.

Q. Have you made any recent examination of the warehouse receipt books here?

A. Only when I checked with Mr. La Shelle, but

(Testimony of Helen Husted.)

no overall examination. I would have no occasion to make one.

Q. Well, during the noon hour today did you look through [1565] any of these warehouse receipt books?      A. No, sir.

Q. After all of the whiskey or spirits behind one of these warehouse receipts had been removed from the warehouse, I believe you said the original was either marked cancelled or the name torn off and returned to you and you pasted it back in the book, is that right?

A. I would have no way of knowing whether all the material had been removed. What I said, Mr. Fisk, was that when Mr. McMains had finished making his record of whatever removals or cancellations were made, he gave the receipt—the original receipt back to me and asked me to put it in the book. Then, so far as coverage is concerned, I wouldn't have anything to do with that.

Q. You never at any time knew whether there was any spirits or whiskey behind any of the warehouse receipts that you typed up, did you?

A. No, that had nothing—that wasn't in my—

Q. That wasn't among your duties to obtain that information?      A. No, sir.

Q. Now, you did say though that when Mr. McMains brought a cancelled original back and handed it to you, you pasted it in the book.

A. That's right.

Q. But you don't remember whether or not he

(Testimony of Helen Husted.)

always did that as soon as the whiskey or spirits had been removed from the warehouse.

A. I couldn't say when he did it.

Q. In other words, there may have been instances where [1566] whiskey or spirits were removed from the warehouse and the original information returned to the book, isn't that right?

Mr. La Shelle: Just a moment, your Honor, we object to that as not proper cross-examination. The lady said that when——

The Referee: Well, she said she didn't know. The objection is sustained.

Mr. La Shelle: She didn't know.

Q. And I show you Petitioner's Exhibit 59 for Identification which is——

Mr. La Shelle: In evidence. My records show 59 was in evidence.

Mr. Fisk: Well, it was for identification if it is in evidence.

The Referee: In any event, the witness is going to look at a warehouse receipt that is a part of Exhibit 59.

Mr. Fisk: Correct.

Q. And the number of the warehouse receipt is 3355-B and you do not see the original in the book, do you?      A. No, I do not.

Q. And you do not see the yellow copy.

A. No, sir.

Q. And does that purport to be a warehouse receipt issued to Schenley?      A. No.

Q. And you do not know whether the eighty-four

(Testimony of Helen Husted.)

barrels covered by that warehouse receipt of whiskey are presently in [1567] the warehouse or not?

Mr. La Shelle: Well, we object to that, your Honor. This witness has already stated that she did the clerical work or filling out what was done; she knows nothing about what was done with the receipt.

Mr. Fisk: She still can answer that question, your Honor.

The Referee: Do you know?

A. I do not.

Q. And the yellow copy is not there either.

A. The yellow copy of the receipt is not there.

Q. Do you have any recollection of sending that yellow copy to the American Trust?

A. I can't tell you now, Mr. Fisk.

Q. And what is your recollection with regard to the practice of Hedgeside while you were there with respect to customers other than Schenley? Did you follow the same practice?

A. I don't know what the practice was in this case.

Q. Well, I am not asking in that case; I am asking you what the work or practice was at Hedgeside with respect to customers other than Schenley. Was it the same as with Schenley?

A. Not necessarily. Whatever the deal was with the other client.

Q. I see. In other words, you removed all copies from the warehouse receipt book according to the



(Testimony of Helen Husted.)

special deal with the particular customer, is that right? [1568]

A. No, according to whatever instructions Mr. McMains gave me.

Q. Well, it varied with customers.

A. I presume it did vary with customers.

Mr. Fisk: That's all.

Mr. La Shelle: That's all.

The Referee: Thank you very much, Mrs. Husted. You're excused. \* \* \* \* \* [1569]

ARTHUR E. LEITHMAN

called as a witness on behalf of the respondent, Anglo California Bank, being first duly sworn by the Referee, testified as follows:

The Referee: Q. What is your full name? [1574]

A. Arthur E. Leithman.

Q. And the spelling? A. L-e-i-t-h-m-a-n.

Q. Where do you reside? A. Oakland.

Q. Do you have a street address?

A. 2437 East 26th Street.

Mr. Walsh: East 26th Street?

The Witness: Yes.

The Referee: Very well, Mr. Fisk.

Direct Examination

Mr. Fisk: Q. Mr. Leithman, by whom are you employed at the present time?

A. The Anglo California National Bank, San Francisco.

(Testimony of Arthur E. Leithman.)

Q. You are employed at the main office?

A. Main office.

Q. 1 Sansome Street.

A. 1 Sansome Street.

Q. In what department are you employed with that institution?      A. In the note department.

Q. How long have you been in that department?

A. About thirty years.

Q. Do you know Richard I. Stone?

A. Yes.

Q. About how long have you known Mr. Stone?

A. I would say about twenty-five years.

Q. Do you know of any business transaction between the Anglo Bank and the Hedgeside Distillery Corporation?      A. Yes.

Q. And have you had to do with any of those transactions? [1575]      A. Yes.

Q. I take it from your statement that you have been in the note department for some thirty years that you were handling that department in the years '47 and '48, is that correct?      A. That's correct.

Q. During that time, did the bank carry on a practice of lending money to the Hedgeside Distillery Corporation and taking as security, warehouse receipts?      A. Yes.

Q. With Hedgeside.      A. Yes.

Q. And you handled those transactions, did you, during that period?      A. I did.

Q. State generally how they were handled?

A. Well, Mr. Stone would come in the morning, bringing the warehouse receipt, tell me he wanted so

(Testimony of Arthur E. Leithman.)

much money; the warehouse receipt was covering so many cases or barrels of whisky or liquor and he would give me a value and we would loan him so much of the value, pre-arranged, before.

Q. Would he execute any documents?

A. Yes, he would execute the promissory note there.

Q. Covering the amount?

A. Covering the amount that we would loan him covered by the warehouse receipt.

Q. And then how was the amount of the loan advanced to Hedgeside?

A. By crediting to his commercial account.

Q. When you say "his," you are referring to the—— [1576]

A. To the Hedgeside, I should say.

Q. Mr. Leithman, I show you a group of three documents, one of them purporting to be a non-negotiable warehouse receipt of the Hedgeside Distillery Corporation and numbered 3469-B and the other one a promissory note to the Anglo Bank purporting to be executed by the Hedgeside Distillery Corporation and then a pencil or rather an ink memorandum. I ask you if you ever saw those documents before?      A. Yes, I have.

Q. Calling your attention to warehouse receipt 3469-B, do you recognize the signature placed under the name Hedgeside Distillery Corporation on that document?      A. I do.

Q. Whose signature is it?

A. It's A. H. McMains.

(Testimony of Arthur E. Leithman.)

Q. Are you familiar with that signature?

A. I am.

Q. By whom does it purport to be counter-signed?

A. By R. I. Stone.

Q. Are you familiar with Mr. Stone's signature?

A. I am.

Q. And do you recognize that as a signature?

A. I do.

Q. Will you state when you received this document and the circumstances under which you received it—this warehouse receipt—when you first received it?

A. June the 19th, '47.

Q. June the 19th, 1947?

A. Yes.

Q. And it was handed to you by whom? [1577]

A. By Mr. Richard Stone.

Q. By Mr. Stone.

A. Yes.

Q. What did you do upon his handing you that document and what did he request of you and what did you do?

A. He requested that I make a loan on the security covered by the warehouse receipt, which I did.

Q. Then what did you do with respect to any note to evidence that loan?

A. Well, the note was put through and kept through on our records.

Q. And did you make a note out on the form of the bank?

A. Yes, on the form of the bank and he signed and sealed.

Q. You handed it to Mr. Stone and he signed and

(Testimony of Arthur E. Leithman.)

sealed. And is this promissory note before you the note that was executed at that time?

A. Not at that time. This is a renewal of the note.

Q. A similar note to that but different in amount and date was executed by Mr. Stone at the time of receipt?      A. That's right, yes.

Q. And then from time to time payments were made and renewal notes were executed.

A. That's correct.

Q. Until at the present time there is outstanding the promissory note before you now, is that right?      A. That's right.

Q. With a balance due of \$7,980, is that right?

A. That's right. [1578]

Mr. La Shelle: \$7,980?

Q. And what is the date of that note?

A. The date of the note is January 14, 1949.

Q. And it is executed by whom?

A. By R. I. Stone.

Q. On behalf of whom?

A. On behalf of Hedgeside Distillery.

Q. Now, what is this note attached?

A. Well, that was just for convenience so we could trace down the notes on account of so many renewals, that's all.

Q. That is a history of the notes executed in connection with the pledge of that warehouse receipt, is that correct?      A. That is right, yes.

Q. What was the amount of the loan when the warehouse receipt was first received?

(Testimony of Arthur E. Leithman.)

A. \$10,500.

Q. Do you have any permanent records of the bank with you that will show the date on which that amount was advanced to the Hedgeside Distillery Corporation?      A. We have ledger sheets.

Q. Is this—

A. That is right here (indicating)—Ten Thousand, Five Hundred on that date.

Q. What is the card you have in your hand?

A. That is the ledger sheet of the Hedgeside Distillery account. [1579]

Q. The ledger sheet kept by whom—by what institution?

A. By the Anglo California National Bank, note department.

Q. Is that a permanent record of the Anglo Bank?      A. That is a permanent record.

Q. And kept in the regular course of business?

A. That is right.

Mr. Fisk: Now, your Honor, I would like at this time to offer these documents in evidence.

Mr. La Shelle: Could I just ask a couple of questions at this time of the witness that I don't quite understand? May I just see that for a moment?

Mr. Dinkelspiel: May I interrupt for a moment and ask counsel if they expect to reach Mr. Glaser this morning? If not, we would like to return to San Francisco. We are both busy.

Mr. Fisk: I don't think—I am going to put in seven more of these documents. Unless Mr. La

(Testimony of Arthur E. Leithman.)

Shelle's cross-examination will be protracted and I don't see why it will, I'll then take on Mr. Glaser. I would say in a half an hour; that would be my guess. Now, Mr. La Shelle can change that.

Mr. La Shelle: Well, I don't know exactly. You haven't finished yet. I'll have some cross-examination. It's eleven o'clock now.

Mr. Dinkelspiel: Well, you have one hour before noon. I don't know how late the Court will run beyond [1580] twelve. I'm not trying to——

The Referee: Twelve, Mr. Dinkelspiel.

Mr. Fisk: I will say, if it will convenience you and Mr. Glaser, why as far as I am concerned, you can bring him back here at two o'clock, but this is a preliminary matter I have to put in.

Mr. Dinkelspiel: I understand that. I am not trying to interfere in any way but I just thought we could save——

Mr. Fisk: If that is agreeable with Mr. La Shelle and the Court.

Mr. La Shelle: My guess would be that if we reach Mr. Glaser this morning, it will be so close to noon it won't make much difference.

The Referee: As far as the Court is concerned, I would have no objection to an early adjournment if we ran into that proposition. Mr. Walsh, how do you feel?

Mr. Walsh: That's satisfactory to me.

(Discussion off the record.)

The Referee: Mr. Dinkelspiel, you and your client and Mr. Jaffa are excused until two o'clock.

(Testimony of Arthur E. Leithman.)

Mr. Dinkelspiel: Thank you. I suppose these records are safe **here**.

The Referee: The courtroom will be locked.

(Discussion off the record.)

Mr. La Shelle: I just wanted to clear up something [1581] in my notes.

Mr. La Shelle: Q. This note, I take it, is a renewal note executed on January 1, '49?

A. Executed on January 14. That was the date that the interest was——

Q. In other words, the note was executed January 14, 1949 retroactively to January 1, 1949.

A. That's right.

Q. So this is not the original note——

A. Oh, no, no.

Q. And what was done with the original note or notes?

A. Well, they are the property of the borrower when they are renewed.

Q. I see. However, although the original note and any renewals that might have been between the original note and this note, while they are not here, the history of those notes, the amounts of them and any payments that might have been made on them are contained on either this second sheet——

A. There is a memorandum with each note.

Q. And they can also be traced on the ledger, can they not?

A. Also be traced on the ledger card.

Q. Now, where did you say the original note was?



(Testimony of Arthur E. Leithman.)

A. It was given back to the borrower.

By Mr. Fisk: Q. The original note was given back to the borrower and all of the intervening renewal notes were returned to the borrower, [1582] is that right? A. That's right.

Mr. La Shelle: So the history there can be traced.

Mr. Fisk: Yes.

Q. Mr. Leithman, since you received this warehouse receipt under date of June 19, 1947, has its possession always been with the Anglo Bank?

A. This note?

Q. Yes. A. Yes, it has always.

Mr. Fisk: Any objection to the offer, Mr. La Shelle?

Mr. La Shelle: None whatever.

Mr. Fisk: Your Honor, I have photostatic copies for Mr. La Shelle, but to save time, I'll arrange it afterwards.

The Referee: Very well. Warehouse receipt No. 3469-B, note dated January 14, 1949, signed by Hedgeside Distillery Corporation, by R. I. Stone in the sum of \$7,980 and ink notation memorandum — the three documents will be Respondent Bank's Exhibit No. 4. Interest and principal liability ledger sheet, Hedgeside Distillery Corporation, with posting dates from June 5, 1947 to June 20, 1947, Respondent Bank's Exhibit No. 5. And on the reverse of the ledger sheet, the posting dates are from June 20, '47 to July 8, '47.

Mr. Walsh: What is that again?

(Testimony of Arthur E. Leithman.)

The Referee: June 20, 1947 to July 18, 1947. And [1583] the Court is returning Exhibits No. 4 and No. 5 to Mr. Fisk who will furnish counsel and the Court with photostatic copies.

(The documents referred to were received by the Referee and marked "Respondent Bank's Exhibits No. 4 and 5," respectively.)

Mr. La Shelle: Fred, may I ask this? I notice there is another ledger sheet here against two warehouse receipts. I was under the impression that the ledger No. 5 covered all of these. Apparently, there is a ledger, too. There is a supporting document to various warehouse receipts sometimes there being one ledger to a warehouse receipt and sometimes there will be no warehouse receipts.

Mr. Fisk: No question there were many other transactions.

Mr. La Shelle: Yes, I understand that. In other words, this is somewhat like my supporting documents.

Mr. Fisk: That's right.

Mr. La Shelle: In that they were sometimes bunched together.

Mr. Fisk: That's right.

Mr. La Shelle: I see, so that this is a similar setup as Exhibits 4 and 5, except in this instance there are two warehouse receipts to one ledger sheet.

Mr. Fisk: That's correct. [1584]

Mr. La Shelle: I see. I was under the impression that that ledger sheet covered all of them.

(Testimony of Arthur E. Leithman.)

Mr. Fisk: No.

Mr. La Shelle: I didn't examine it closely.

Q. Now, Mr. Leithman, I show you a second group of documents which consist of Hedgeside Distillery warehouse receipt 3470-B dated July 17, 1947, purporting to be non-negotiable and that document is signed by whom?

A. By A. S. McMains and counter-signed by D. F. Logan.

Q. And you are familiar with the signatures of both of those individuals? A. I am, yes.

Q. And that document was presented to you by Mr. Stone in the same way? A. That's right.

Q. That warehouse receipt No. 3469-B was, is that right? A. That's correct.

Q. And advances made against it in the same manner. A. In the same manner.

Q. And a note executed by Mr. Stone in the same manner. A. That is right.

Q. I also show you warehouse receipt 3470-B, dated July 30, 1947 and that is signed and counter-signed by whom?

A. By A. H. McMains and counter-signed by D. F. Logan.

Q. And that warehouse receipt was received by you in the same way? A. That's correct.

Q. As 3469-B, is that right? A. That is correct.

Q. And a note was executed by Mr. Stone to cover the advances [1585] made.

A. That is right.

Q. For which that warehouse receipt was

(Testimony of Arthur E. Leithman.)

pledged, is that right? A. That is right.

Q. And then there are two ink memoranda attached to these notes setting forth the history of the original note and the renewals and the balance do just as in the first instance, is that right?

A. That is right, yes.

Q. Then there is attached what purports to be a ledger card of the Anglo Bank for Hedgeside Distillery Corporation and will you point out on that ledger card the entries showing the original advances when these two warehouse receipts were turned over to the bank?

Mr. La Shelle: May I just take a look at something there for a moment, Fred?

Mr. Fisk: Surely.

Mr. La Shelle: I might call your attention, Fred, that on the schedule the date of that warehouse receipt is given as June 17, 1947 but it is actually July. You called it right.

A. There are two entries here covering each note—for each note.

Q. Would you read those entries? What was the first entry? A. 20,820.

Q. And that was the amount advanced by the Anglo Bank to the Hedgeside Distillery Corporation when it received which warehouse receipt? Give the number. A. 3470-B. [1586]

Q. And what was the date of that entry on the ledger card of the advance? On the ledger card, what is the date of the entry?

A. July 18, 1947.

Q. Now, with regard to warehouse receipt

(Testimony of Arthur E. Leithman.)

3472-B, what is the amount that was originally advanced against that warehouse receipt and the date as shown from the ledger card?

A. July 30, '47, \$3,000.

Mr. La Shelle: Three Thousand?

The Witness: \$3,000.

Q. Now, what are the present balances due on those two advances?

A. On the warehouse receipt of 3472, the note balance now is \$3,000 and on 3470 the note balance \$19,470.

Q. And you received on behalf of the bank these two warehouse receipts from Mr. Stone on the dates indicated at that time credits were made in the ledger, is that correct? A. That's right.

Q. And since that time, they have at all times remained in the possession of the bank and pledged with the bank. A. They have.

Mr. Fisk: I would like to have these——

The Referee: As one exhibit, Mr. Fisk?

Mr. Fisk: Yes.

The Referee: The documents just referred to by Mr. Fisk will be Bank's Exhibit No. 6 and the same ruling with reference to the withdrawal of the original [1587] documents.

Mr. La Shelle: There are two notes there, aren't there?

The Referee: Well, I can call off the documents. There is a note dated January 14, 1949 in the sum of \$3,000, an ink memorandum, warehouse receipt No. 3472-B, a note dated January 14, 1949 in the sum of \$19,470 signed by Hedgeside Distillery Cor-

(Testimony of Arthur E. Leithman.)

poration, by R. I. Stone, another ink memorandum, warehouse receipt 3470-B, ledger sheet, Hedgeside Distillery Corporation, interest and principal liability ledger, from July 18 '47 to August 22, 1947.

Mr. La Shelle: There is also a white sheet there, an ink sheet of the history.

The Referee: There are two of them, Mr. La Shelle.

Mr. La Shelle: Oh, two.

Mr. Walsh: Will you please read the dates?

The Referee: The ledger sheet?

Mr. Walsh: Yes, please.

The Referee: The postings go from July 18, 1947 to August 22, 1947.

(The documents referred to were received by the Referee and marked "Respondent Bank's Exhibit No. 6.")

Q. Mr. Leithman, I show you a third group of documents, which include a warehouse receipt of Hedgeside Distillery, No. 3474-B, dated September 10, 1947, a promissory note in the [1588] principal amount of \$3,000 dated July 14, 1949 and an ink memorandum, a warehouse receipt of Hedgeside No. 3475-B dated September 16, 1947, a promissory note to the Anglo Bank in the principal amount of \$6,000 dated January 14, 1949 and an ink memorandum; a warehouse receipt No. 3476-B of Hedgeside, dated September 16, 1947, a promissory note to the Anglo Bank in the principal amount of \$6,000 dated January 14, 1949 and an ink memorandum, and then a ledger sheet of the Anglo Bank covering the Hedgeside Distillery Corporation with posting dates

(Testimony of Arthur E. Leithman.)

running from August 22, 1947 through October 7, 1947. Now, referring to warehouse receipt 3474-B, that document is signed and countersigned by what persons?

A. By A. H. McMains and R. I. Stone.

Q. Respectively. A. Respectively.

Mr. La Shelle: Is that 72 you are referring to?

Mr Fisk: 74—3474.

Q. Warehouse receipt 3475 was signed and countersigned respectively by whom?

A. A. H. McMains and Henry A. Robert.

Q. And warehouse receipt 3476 was signed and countersigned respectively by whom?

A. By A. H. McMains and Henry A. Robert.

Q. The said three promissory notes are each signed by whom?

A. By Hedgeside Distillery, R. I. Stone as president.

Q. You recognize all of those signatures? [1589]

A. Yes, I recognize all of those signatures.

Q. Now, examine the ledger card and state when those warehouse receipts were originally turned over to you and the original notes executed and the amount of the advance by the bank to Hedgeside.

A. 3476-B, September 17, 1947, and the amount advanced \$6,000.

Q. What is the present balance due?

A. The present balance is Six Thousand.

Q. And has that warehouse receipt at all times since you originally received it been in the possession of the bank and pledged against the balance due from Hedgeside?

(Testimony of Arthur E. Leithman.)

A. It has. Warehouse receipt 3475-B, September 17, '47, \$6,000, and the present balance is still Six Thousand. Warehouse receipt 34——

Q. Just a minute. That warehouse receipt has at all times been in the possession of the bank and pledged against the balance due by Hedgeside since you originally received it, is that right?

A. Yes. Warehouse receipt 3474, September 10, '47 for \$3,000 and the balance is still Three Thousand.

Q. And the same thing is true with regard to the possession of it. A. Yes.

Q. The pledge, is that right?

A. That is right.

Mr. Fisk: I would like to have these in evidence as one exhibit.

The Referee: The previous mentioned documents all [1590] as one exhibit, Respondent Bank's Exhibit No. 7, and may also be withdrawn.

Mr. La Shelle: I take it they are withdrawn to be——

The Referee: Photostat copies to be furnished to counsel and the Court.

(The documents referred to were received by the Referee and marked "Respondent Bank's Exhibit No. 7.")

Q. Mr. Leithman, I show you a group of documents consisting of Hedgeside warehouse receipt 3477-B, dated October 23, '47, promissory note to the Anglo Bank in the principal amount of \$6,000 dated January 14, 1949, ink memorandum and ledger sheet of the Anglo Bank covering the Hedge-



(Testimony of Arthur E. Leithman.)

side Distillery Corporation's account, bearing posting dates running from October 7, 1947 to November 18, 1947. I ask you how warehouse receipt 3477-B is respectively signed.

A. A. H. McMains and R. I. Stone.

Q. Is it A. H. or W. S.?

A. I thought it was A. H.—W. S. McMains.

Q. You recognize that as his signature?

A. Yes, that's his signature.

Q. You have his signature card?

A. We have a copy of his signature on the card.

Q. And how is it counter-signed?

A. R. I. Stone.

Q. Will you state when you received that warehouse receipt, [1591] how much money the bank advanced to Hedgeside in connection therewith?

A. Received the warehouse receipt on October 22, '47 and we advanced \$6,000 and the present balance is still \$6,000.

Q. Does an entry appear?

A. An entry appears.

Q. On the ledger card?           A. That's right.

Q. What date?           A. October 22, '47.

Q. In what amount?       A. \$6,000.

Q. And since you originally received this warehouse receipt, it has at all times remained in the possession of the bank?

A. It has all the time.

Q. And there has at all times been a balance due the bank from Hedgeside and that document has been held in pledge against it, is that right?

A. That's correct.

(Testimony of Arthur E. Leithman.)

Q. In all respects, this transaction and all of the other transactions were handled as you have outlined with the original transaction mentioned here, is that right? A. That's correct.

Mr. Fisk: I offer this in evidence.

The Referee: Respondent's Exhibit No. 8 consists of an ink memorandum, a note dated January 14, 1949 in the amount of \$6,000, warehouse receipt 3477-B and ledger sheet commencing October 7, 1947 and final entry October 7, 1947.

Mr. Walsh: What was the first date, your Honor?

The Referee: Pardon me. October 7, '47 to November [1592] 18, 1947, Respondent Bank's Exhibit No. 8. Also may be withdrawn and photostatic copies substituted.

(The documents referred to were received by the Referee and marked "Respondent Bank's Exhibit No. 8.")

Mr. Fisk: In order to shorten the examination, your Honor, I have three groups here; I'll present them all together.

Q. I have here, Mr. Leithman, three groups of documents which I will read out in their respective order: Warehouse receipt of Hedgeside Distillery Corporation No. 3548-B dated December 17, 1947, promissory note to the Anglo Bank in the principal amount of \$6,000 dated December 27, 1948, ink memorandum regarding the history of said note and renewals and ledger sheet of the Anglo Bank covering Hedgeside Distillery Corporation and bearing postings running from November 24, 1947

(Testimony of Arthur E. Leithman.)

through January 6, 1948, warehouse receipt 3652-B of Hedgeside dated September 16, 1948, promissory note to Anglo Bank, principal amount of 42,253 dated December 20, 1948, ink memorandum showing history of the renewals, ledger sheet of Anglo Bank covering Hedgeside Distillery Corporation bearing postings from September 13, 1948 to October 8, 1948, Hedgeside Distillery Corporation warehouse receipt No. 3689-B, dated January 5, 1949, promissory note to the Anglo Bank in the principal amount of \$18,130, dated January 6, 1949, two ink memoranda covering the renewal history and ledger sheet of Anglo Bank bearing postings between dates April 30, '48 and April 29, '47—

Mr. Walsh: You say, the ledger sheet—Did you just describe the ledger sheet now?

Mr. Fisk: Doesn't sound right, does it?

Mr. Walsh: No.

Mr. Fisk: I may be a little mixed up here. Just a minute. Let's see if we have got the wrong note with the wrong ledger sheet.

(Discussion off the record.)

Q. All right, I show you warehouse receipt 3652-B and ask you whose signatures appear respectively thereon.

A. R. I. Stone and D. F. Logan.

Q. R. I. Stone as the—

A. Counter-signed by D. F. Logan.

Q. R. I. Stone for whom?

A. For the Hedgeside Distillery.

Q. And D. F. Logan?

A. Counter-signed.

(Testimony of Arthur E. Leithman.)

Q. When did you receive that warehouse receipt?

Mr. La Shelle: Is this 3548 or——

A. This is 3652. We received this warehouse receipt on September 17, 1948 and it was for \$42,253 and the balance is still the same.

Q. \$42,253 the bank advanced Hedgeside upon receipt of that warehouse receipt?

A. That is correct.

Mr. La Shelle: Now, I may have my notation wrong, but I have the note of 3652 was \$4,253.

The Witness: Forty-two Thousand. [1594]

Mr. La Shelle: Oh, Forty-two Thousand what?

The Witness: Two Hundred and Fifty-three Dollars.

Mr. La Shelle: Slight difference. (Laughter).

Q. That warehouse receipt since you originally received it has at all times been in the possession of the bank and pledged against the bank as the balance due by Hedgeside.

A. That's correct.

Q. Now, look at the warehouse receipt of Hedgeside No. 3548-B and tell me whose signatures appear thereon.

Mr. La Shelle: 48.

Mr. Fisk: 3548.

A. It's W. S. McMains for the Hedgeside Distillery and counter-signed by R. I. Stone.

Q. And when was the warehouse receipt originally received by the Anglo Bank?

A. That warehouse receipt was received by the bank December 18, 1947. A \$6,000 note was ad-

(Testimony of Arthur E. Leithman.)

vanced on that date and the balance is still Six Thousand.

Q. Six Thousand was advanced. And a note signed to evidence it. A. Yes.

Mr. La Shelle: The balance is still Six Thousand.

The Referee: The answer is yes, Mr. Leithman?

The Witness: Oh, pardon me. Yes.

Q. And that warehouse receipt has at all times subsequent to that time remained in the possession of the bank. A. It has. [1595]

Q. And pledged against the balance due by Hedgeside, is that right? A. That is right.

Mr. Fisk: I think that I will close that with that exhibit because this goes outside of the Heaven Hill whisky.

Mr. La Shelle: That's 3548 you just offered.

The Referee: I'll give you the complete lineup——

Mr. Fisk: For the purposes of the record, I would state because I have already referred to this, I am offering the papers that accompanied warehouse receipts 3548 and——

The Referee: 3652.

Mr. Fisk (Continuing): 3652. For the time being, I'll hold in abeyance the warehouse receipt 3689-B and accompanying papers as they go to a different transaction.

The Referee: Very well. Warehouse receipt No. 3548 and accompanying documents and warehouse receipt 3652 and accompanying documents will be Respondent Bank's Exhibit No. 9.

(Testimony of Arthur E. Leithman.)

Mr. La Shelle: In other words, the two warehouse receipts will be combined.

The Referee: Yes.

(The documents referred to were received by the Referee and marked "Respondent Bank's Exhibit No. 9.")

Q. Now, Mr. Leithman, referring to warehouse receipt 3689-B, [1596] that is signed and counter-signed respectively by whom?

A. R. I. Stone for the Hedgeside and Henry A. Robert, counter-signed.

Mr. La Shelle: Roberts and who?

The Witness: Henry A. Robert.

Mr. La Shelle: And who is the other one?

The Witness: And R. I. Stone.

Q. When did you first receive that warehouse receipt? Strike that out. What is the date of the warehouse receipt, Mr. Leithman?

A. January 6.

Q. What year? A. 1949.

Mr. Walsh: Did you say January 6?

The Witness: Yes.

Q. Now, according to your records, when did you first receive that warehouse receipt?

A. According to our records, we first received that warehouse receipt on January 6.

Q. What year? A. '49.

Q. And you made what advances to Hedgeside upon receipt of that warehouse receipt?

A. Well, we made—for that warehouse receipt we made an advance of \$18,130.

(Testimony of Arthur E. Leithman.)

Q. And was a note executed for it?

A. That is correct, yes.

Q. And is that the note that you have before you now that was originally executed? [1597]

A. No, that was a renewal.

Q. That's a renewal note. And the memorandum, ink memoranda you have will show the history of the renewal.

A. That's right.

Q. What is the date of the note you presently have before you?

A. January 6, 1949.

Q. And what is the balance due on that note?

A. \$18,130.

Q. Now, show me on the ledger card where that advance is upon the ledger?

A. (There was no answer.)

Q. Mr. Leithman, do we have the wrong ledger card?

A. No, we have not. This note here was a renewal—this is a little difficult for me. This comprises the three notes one for 4305, 3325 and one for Ten Thousand Five Hundred and of this 4305 and 3920 came in here originally on May 3, 1947 and I think was with some other warehouse receipt and they were withdrawn and goods put in this warehouse receipt and a new note was made covering these notes here.

Q. So that it is your recollection from the examination of the documents before you that this warehouse receipt was a renewal warehouse receipt for other security.

A. I'm quite sure it was, yes.

(Testimony of Arthur E. Leithman.)

Mr. Fisk: Well, your Honor, we'll have to check that to run that down further. Frankly, I didn't notice that. That's all at this time.

Mr. Walsh: Are you offering those in evidence?

Mr. Fisk: No.

The Referee: Pardon me, Mr. La Shelle. Mr. Fisk, you say that's all at this time. You are asking for an opportunity to check.

Mr. Fisk: That's right.

The Referee: Now, after you do make a further check with reference to the documents that you have in your hand and that you have not offered, are you reserving the right to call the witness back?

Mr. Fisk: Yes, I would like to.

The Referee: Do you have any objection to that, Mr. La Shelle?

Mr. La Shelle: None whatever, your Honor. I think Fred will find that putting this stuff in is not quite as easy as it looks.

The Referee: And with that understanding, can Mr. La Shelle go ahead with his cross-examination?

Mr. Fisk: Do you want to adjourn?

Mr. La Shelle: I'll go right ahead. I have a few questions here and I'll take it out of order if it's all right with everyone else.

#### Cross-Examination

By Mr. La Shelle: Q. Mr. Leithman, in the note department there at the bank during the time



(Testimony of Arthur E. Leithman.)

of these transactions, were you in charge of the department?

A. No, I was not in charge of the department.

Q. What is your——

A. I am a note teller.

Q. A note teller? And I take it that in these transactions which you have been discussing here on the stand that you personally did not make the determination as to the value of the warehouse receipts nor as to the amount to be loaned against them.

A. No.

Q. Do you know who made that decision?

A. Well, I would say the loaning officer.

Q. The loaning officer?           A. The loan officer.

Q. And it's true, is it not, that Bill White was the man at the bank generally in charge of the Hedgeside account.

A. It's true.

Q. And what is Bill White's capacity with the bank?

A. Vice-president.

Q. And when Stone came in there with a warehouse receipt, anyone of these that you have discussed, and the loan of X dollars was made, who gave you your instructions as to the amounts and so forth?

A. Well, that was all pre-arranged that the price would be a certain amount and I would loan a certain percentage.

Q. In other words, they would—somebody there at the bank would agree that the whisky was roughly of the value of X dollars and then that the

(Testimony of Arthur E. Leithman.)

loan would be such and such a percentage of X dollars.      A. That's right.

Q. You would never lend the full amount. [1600]

A. Oh, never.

Q. And could you just explain to the Court here just how you got those instructions? In other words, did somebody tell you orally or were you given a memorandum, a slip of paper, or what?

A. No, it was primarily orally, that Stone would be in from time to time and if Mr. White or the loaning officer wasn't there why to take these figures and loan him so much and then it would be okayed after the loaning officer—if the loaning officer was there, Stone would go to the loaning officer and then they would present it to me.

Q. In other words, the loaning end of the bank, so to speak, the loan part, or I don't know what you would call it, they would make that determination.      A. Oh, yes.

Q. And then you would carry out ministerially what they told you to do.      A. That is correct.

Q. So that you had no discretion as to how much to loan.      A. No, never.

Q. Or anything of that nature.      A. No.

Q. And you had nothing whatsoever to do with the credit rating of the borrower as to whether or not he was a good risk.

A. I had nothing whatsoever to do with that.

Q. Your functions were ministerial.

A. That's all.

Q. Now, I think that you stated that you were

(Testimony of Arthur E. Leithman.)

familiar with the various signatures here that appear on the warehouse [1601] receipt of the signature, counter-signature and I take it that as is customary with the bank, there were on file little printed cards filled out with signatures.

A. That's right.

Q. And do you know whether or not during the times in question, Hedgeside had a commercial account with the bank?           A. They had, yes.

Q. And then all the signatures would check against that commercial account would be on file.

A. We have it on file.

Q. Now, I think you mentioned Stone, McMains, Roberts, and Logan as the various officials who signed these warehouse receipts. Were all of their signatures on file or just some of them?

A. We had them all.

Q. All of the four gentlemen I mentioned.

A. That is right.

Q. And in checking these warehouse receipts at any time before taking the stand here today, did you compare those signatures with the signature cards on file?           A. No.

Q. You never did.           A. Not me.

Q. Has there ever been any question in your mind up to the present time as to whether any of those signatures were forgeries?           A. Never.

Q. You are satisfied that they are genuine signatures.           A. (Witness nods affirmatively.)

The Referee: What is the answer? [1602]

The Witness: Yes.

(Testimony of Arthur E. Leithman.)

Q. Now, I understood you to say correctly, did I not, that when these loans were made, cash or check wasn't given to Stone; it was credited to his commercial account.

A. Always credited to his commercial account.

Mr. Walsh: Commercial account of Hedgeside, not his.

Q. I mean of Hedgeside. A. Yes.

Q. And did you perform that function yourself or did you pass that on to somebody else?

A. Well, I made the credit and entered it in his book but then I passed on the books to the regular bookkeeper-clerks.

Q. In other words, another party in the bank would perform the ministerial act of entering the credit on his commercial checking account.

A. Oh, yes.

Q. And with reference to the renewals of these notes, as well as the original notes, I take it that your testimony is the same with reference to them, that you purely performed the ministerial act.

A. Oh, yes.

Q. Of doing it and had nothing to do with the discretion of the bank in making the loan in the first instance and the renewals as well.

A. Yes.

Q. So that the loan department, usually Bill White, handled that. A. That's correct.

Q. And I take it that you didn't have anything to do with any other security that Hedgeside may have had to the bank, such [1603] as a chattel mort-

(Testimony of Arthur E. Leithman.)

gage or a deed of trust or anything of that nature.

A. No, no.

Q. Now, with reference to these exhibits that are here, on all of the exhibits that have gone in here marked by the Court, taking the one that has 3548, warehouse receipt, Bank's Exhibit No. 9, there is referred in the record here an ink history or memoranda on a kind of a white card piece of paper and in each instance they give the history of the original note and their subsequent renewals, right?

A. The history of the individual note, yes, right up to the time it began until the present time.

Q. Did you make those out?

A. Some. I didn't make all of them. I made some. But I got help in making them.

Q. And this one, for example, is that your handwriting?

A. No, sir, that is not my handwriting. None here today were in my handwriting.

Q. Pardon?

A. None of these exhibits today were in my handwriting.

Q. Do you know when these were made out?

A. Well, I couldn't say exactly when but when the attorney asked for the detail of the company why then it was easier to trace it down. This was the more convenient——

Q. In other words, these would normally not be kept.

A. Oh, no, no, they are not a record of the bank.

(Testimony of Arthur E. Leithman.)

It's just convenience's sake so that I can identify them. [1604]

Q. Just convenience.

A. To help everyone.

Q. To help everyone here in this litigation.

A. There have been so many renewals, yes.

Mr. La Shelle: That's all the questions I have, your Honor.

The Referee: Mr. Walsh?

Mr. Walsh: I have no cross-examination, your Honor.

The Referee: Mr. Fisk, now to help to witness——

Mr. Fisk: I have one document I'd like to introduce.

Mr. La Shelle: I take it, Mr. Fisk, with reference to those ink memoranda that weren't kept in the regular course of business that you checked those and vouch for their accuracy, do you not?

Mr. Fisk: No, sir, I have not.

The Witness: Well, the ledger sheet—it follows the ledger sheet.

Mr. La Shelle: Summary of the ledger sheet?

Mr. Fisk: Is it a summary of the ledger sheet as introduced here?

The Witness: Yes.

Mr. Fisk: All of the information that is contained there can be checked against the ledger sheet.

The Witness: Yes.

(Testimony of Arthur E. Leithman.)

Mr. Fisk: I have no objection to your marking that [1605] document for identification.

Mr. La Shelle: No, I just assumed that you checked it.

Mr. Fisk: No.

Mr. Walsh: Mr. Fisk, are you going to introduce this in evidence now?

Mr. Fisk: Yes.

Mr. Walsh: I would like to make this statement, if your Honor please, that it will be understood that this will not bind the trustee in any way in any other proceeding. That is following the stipulation we had originally, Mr. Fisk, that any controversy between the trustee and the Anglo Bank as to title has been reserved so I want it understood that this will not in any way bind the trustee.

Mr. La Shelle: Well, I certainly won't join in any such stipulation.

Mr. Fisk: We have a stipulation that is already in the record, Mr. Walsh. That is about the determination of the respective position of the bank and the trustee. I don't know why this document should be in any different position. I mean, everything I am offering here I would say is subject to that stipulation.

Mr. La Shelle: Well, I would like to call the Court's attention to that and according to your petition, you don't have any such stipulation at all.

The Referee: Well, Mr. Walsh's statement wouldn't affect you in any way. I just wanted to know whether or not he was going to be bound by

(Testimony of Arthur E. Leithman.)

this document in other proceedings. Schenley would not even be concerned about an agreement between Mr. Walsh and Mr. Fisk.

Mr. La Shelle: No, but there was a reference made here that there was a stipulation as to the position of the trustee and the bank as to this particular proceeding and I am not a party to any such stipulation.

Mr. Walsh: We know that.

The Referee: They understand that.

Mr. Fisk: My position, in response to you, Mr. Walsh, is simply that I wouldn't want to stipulate with the trustee that any document duly executed and in the hands of the bank shall have no effect on the position of the trustee.

Mr. Walsh: I'm asking the fact that this document will be introduced in evidence at this time without any objection of the trustee will not be considered a document that later on the trustee cannot object to.

Mr. Fisk: As I understand our stipulation, there is a stipulation in his record already that there will be a subsequent opportunity or a subsequent hearing in which both the bank or the trustee may present such evidence as they may have to determine their respective positions with regard to this liquor, but at [1607] this time we are addressing ourselves to the petition of Schenley.

Mr. Walsh: That's all I want to know, Mr. Fisk. In other words, you are confining the introduction of this document solely to the issues raised



(Testimony of Arthur E. Leithman.)

on the petition for reclamation filed by Schenley.

Mr. Fisk: At this time.

Mr. Walsh: At this time. What do you mean at this time?

The Referee: He means that he will be afforded an opportunity to make an offer of it at which time if you deemed to have a good objection, he may enter his objection, is that correct?

Mr. Fisk: I mean, if I have a controversy with the trustee about our relative position, I don't want to foreclose myself from offering any document of any kind.

Mr. Walsh: That's understood. I understand that.

The Referee: But Mr. Walsh doesn't want to automatically be able to offer it just by reason of the fact that it has been received in evidence in this proceeding.

Mr. Walsh: Without objection.

Mr. Fisk: That's agreeable to me. You may make such objection that you see fit.

By Mr. Fisk: [1608] Q. Mr. Leithman, I show you what purports to be a general pledge agreement addressed to the Anglo California National Bank of San Francisco and signed by Hedgeside Distillery Corporation by R. I. Stone, president, and ask you if you recognize that to be the signature of R. I. Stone? A. I do, yes.

Q. And the seal of the Hedgeside Distillery Corporation? A. I do.

Q. Now, is that a document that was duly re-

(Testimony of Arthur E. Leithman.)

ceived at the note desk at the Anglo Bank and has been held at all times since that date at the bank and is still being held there?

A. That is right.

Mr. Fisk: I'd like to offer that in evidence.

The Referee: General pledge agreement dated the 16th day of October, 1942, signed Hedgeside Distillery Corporation by R. I. Stone, president, Respondent Bank's Exhibit No. 10. Mr. Fisk, do you desire to withdraw this document?

Mr. Fisk: Yes, all of these documents.

The Referee: Do you have a photostat of it?

Mr. Fisk: Yes.

Mr. Walsh: No. 10?

The Referee: No. 10.

(The document referred to was received by the Referee and marked "Respondent Bank's Exhibit No. 10.")

Mr. Fisk: I thought during the noon hour we would [1609] arrange the photostats.

The Referee: Is that all for Mr. Leithman at this time?

Mr. Fisk: Yes, excepting these (indicating).

The Referee: Very well, then, you want Mr. Leithman to remain until you decide?

Mr. Fisk: Yes.

\* \* \* \* \* [1610]

#### Cross-Examination

By Mr. La Shelle: Q. Mr. Leithman, with reference to the note dated January 6, 1949 for \$18,130

(Testimony of Arthur E. Leithman.)

which I think is 19 and the warehouse receipt 3689-B which is dated the day before, January 5, 1949, and which you called the new security, you yourself didn't have anything to do with whether or not the note should be taken and the old note renewed or anything, did you, with the discretion of the [1964] bank in making the transaction?

A. No.

Q. In other words, your administration, if that is the proper word, was ministerial in character. You made certain entries, directed by other people.

A. That's correct.

Q. And am I correct in stating Mr. Bill White, one of the vice-presidents of the bank at that time, was in charge of the general Hedgeside loan account?

A. You're correct, yes.

Q. And the judgment exercised by the bank with reference to the taking of this security and other security and the loans on new notes or renewals of old notes, those judgments were exercised, I take it, by Mr. White.

A. That's right.

Mr. Fisk: I object to that on the ground that it is obviously not within the knowledge of this witness. The judgment that was exercised by Mr. White. I think he can state what Mr. White did, but that calls for his conclusion.

The Referee: Will you read Mr. La Shelle's question?

Mr. La Shelle: He said yes.

Mr. Fisk: I still ask that it go out.

The Referee: Sustained.

(Testimony of Arthur E. Leithman.)

(The last question and answer were read by the Reporter.)

The Referee: It may go out.

Q. In other words, Mr. White was in charge of that account.

A. He was in charge of that; that was his account. [1965]

Q. That was his account and all of the transactions that you have done with all of these various exhibits that have been introduced while you were on the stand, your actions with reference to those were ministerial in character. A. That is right.

Q. And you yourself did not exercise any judgment. A. At no time.

Q. With reference to the transactions themselves. A. At no time.

Q. That's correct. Now, with reference to—I just want to make sure that I just understand something about these ledger sheets (I happen to be using No. 27 here) and these ledger sheets are interest and principal liability ledger sheets are all the same, aren't they? A. Yes.

Q. On the same printed form, I mean?

A. Yes.

Q. And most of the columns here are self-explanatory to me, but to make sure that I understand them, I want to ask you this: You will notice toward the right-hand side of the sheet there is a column which is captioned "pickup," then to the right "direct" and to the right of that is "indirect." There are no entries in the indirect column,

(Testimony of Arthur E. Leithman.)

but there are a number of entries in the pickup and direct.      A. Yes.

Q. Now, am I correct in stating that the pickup and direct are similar to what you get in a bank statement, the pickup being the old balance and the direct the new balance?

A. That is right, yes. [1966]

Mr. Fisk: Wait a minute; I didn't hear the answer. Speak up.

A. The pickup is the old balance and the new balance is added to the pickup.

Q. In other words, the pickup column is the old balance like you would have on a bank statement at the end of the month and the direct would be your new balance.

A. (Witness nods affirmatively.)

Q. Which would be——

The Referee: When you shake your head the Reporter doesn't get that. Is the answer yes?

The Witness: Yes.

Q. Now, I don't know whether it plays any part in this or not, but what would indirect be?

A. Doesn't play any part in this transaction. It would be something that probably the Hedgeside had discounted other papers—trade acceptances, something that is indirect. It has nothing to do with this.

Q. Now, with reference to warehouse receipt——

Mr. Fisk: Is this the Hedgeside you are pulling out now?

Mr. La Shelle: This is the group that was orig-

(Testimony of Arthur E. Leithman.)

inally given to be by Mr. Casey. It has now been split up into a lot of different numbers this morning. It never did have a number to start with.

(Discussion off the record.) [1967]

Q. I have here the ink memo, so-called which relates to warehouse receipt 3689-B, it consists of two pages, and I have forgotten, did you make this out? A. No, I did not.

Q. You didn't. Do you know who did?

A. Mr. Armstrong.

Q. Mr. Armstrong? A. Yes.

Q. Now, I want to make sure here that I understand these. On the upper left-hand corner of these ink memos, you start with the latest or the last note, don't you?

A. Yes, because we're working back.

Q. Then you work down the first column through on notes. A. (Witness nods affirmatively.)

Q. And you do the same thing in the second column, do you not? A. Yes, sir.

Q. And that would also hold true of page 2.

A. (Witness nods affirmatively.)

Q. So that the first note in question is at the end of these ink memos and the last note in question is at the beginning of them? (Indicating).

A. That's right.

Q. That's right? And that is the technique that has been followed on all of these——

A. On all of those.

Q. On all of these memos. Now, directing your attention to the Bank's Exhibit No. 4, which con-

(Testimony of Arthur E. Leithman.)

sists of a group of documents being warehouse receipt No. 3469-B, plus a note, plus an ink memorandum——

Mr. Fisk: May I interrupt you? What did you say [1968] the number of the warehouse receipt was?

Mr. La Shelle: The number I have is 3469. That's what Mr. Casey gave me.

(Discussion off the record.)

Mr. La Shelle: I know, but I'm directing his attention to this particular exhibit.

Mr. Walsh: Mr. La Shelle, in order to avoid any confusion, they made a mistake and gave you the wrong warehouse receipt. This is 3969.

Mr. Fisk: The warehouse receipt is 3689-B.

Mr. La Shelle: No, no, no, no; 3689-B.

Mr. Walsh: Is Respondent's Exhibit No. 20.

Mr. La Shelle: That's right. Now, I am directing his attention to an entirely different exhibit.

Mr. Walsh: Oh, Exhibit No. 4.

Mr. La Shelle: This is Exhibit No. 4.

Mr. Fisk: Oh, I beg your pardon.

Mr. La Shelle: This is Exhibit No. 4, which is a group consisting of a note, an ink memorandum and warehouse receipt No. 3469. Now, does that tie in with Mr. Casey?

Mr. Fisk: That's right, not introduced today.

Mr. La Shelle: No.

Q. Now, directing your attention to the ink memorandum on this particular note, that follows the same course as you have testified, if you look

(Testimony of Arthur E. Leithman.)

at the ink memorandum on the upper, left-hand [1969] corner, that's the last note and on the right-hand column, the lower part is the first note. That follows the same course, does it not? That consists of one sheet.

A. That's the same as the other one.

Q. Yes. Now, directing your attention to what would be the first note here, note No. 14357 for \$10,500, it states "came on our books 6-19-47" and written in "was secured by warehouse receipt 3469-B and No. 37." A. Yes.

Q. Now, directing your attention again to the ink memorandum which belongs to warehouse receipt 3689-B—I've lost track of that memorandum. What was it—20 or 21?

Mr. Walsh: Which one is that?

Mr. Fisk: Twenty.

Mr. La Shelle: Twenty?

Q. (Continuing): Warehouse receipt No. 20, directing your attention to the last two items on this ink memo, with a number of the note and the amount of the note, it states the same thing: "Came on our books 5-2-47." There is no notation there that it was secured by any warehouse receipt, is there? A. No, there is not.

Mr. La Shelle: That's all the questions I have, your Honor.

The Referee: Mr. Walsh?

Mr. Walsh: No questions, your Honor.

The Referee: Mr. Fisk?



(Testimony of Arthur E. Leithman.)

Redirect-Examination

By Mr. Fisk: [1970] Q. Mr. Leithmann, in carrying out your duties in the note department, is Mr. White the only officer of the bank that gave you any instructions?

A. I would say yes, his instructions were final.

Q. Is he the only officer of the bank who gave you any instructions?

Mr. La Shelle: Just a moment, your Honor, we object to that as having been asked and answered. It's cross-examination——

The Referee: He hasn't answered it. He said Mr. White's word was final, but that's not the question. Read the question.

Mr. La Shelle: My objection also to it is that doubtless he takes instructions from other officers, but with reference to the Hedgeside controversy——

The Referee: Objection overruled. Will you read Mr. Fisk's question?

(The last question was read by the Reporter.)

Mr. Fisk: Did you get the question?

A. Yes, he was the only one.

Q. He was the only one. That's all.

The Referee: Mr. Leithman, you are excused.

\* \* \* \* \* [1971]

DAVID F. LOGAN

called as a witness on behalf of Respondent Bank, being first duly sworn by the Referee, testified as follows:

By the Referee: Q. Your full name?

(Testimony of David F. Logan.)

A. David F. Logan.

Q. L-o-g-a-n? A. Yes, sir.

Q. Where do you reside, Mr. Logan?

A. 181 Santa Rosa Avenue, Oakland.

The Referee: Very well, Mr. Fisk.

### Direct Examination

By Mr. Fisk: Q. Mr. Logan, what is your business at the present time?

A. Manufacturer's representative.

Q. Were you ever connected with Hedgeside Distillery Corporation? A. I was. [2097]

Q. When were you last connected with that corporation? A. July 1, 1949.

Q. And in what connection were you associated with that corporation at that time?

A. Sales manager.

Q. Were you an officer of the corporation at that time? A. Yes, sir.

Q. What office? A. Vice-president.

Q. Were you a director? A. Yes, sir.

Q. When did you first become associated with that corporation? A. January 1, 1939.

Q. And in what capacity did you become associated with it at that time?

A. Sales manager.

Q. Were you an officer at that time?

A. No, sir.

Q. Do you recall approximately when you became an officer?

(Testimony of David F. Logan.)

A. Approximately eighteen months later if my memory serves me right.

Q. And at the same time, you became an officer, did you become a director?      A. Yes, sir.

Q. Did you continue in those capacities for the Hedgeside corporation throughout the period from I would say the middle of 1940, as I understand your testimony, up until July 1, 1949?

A. I did, sir.

Q. Do you know Mr. Richard I. Stone?

A. I do.

Q. When did you first become acquainted with Mr. Stone?      A. In the fall of '33.

Q. Now, did you become acquainted with him in a business [2098] way or in a social way?

A. Business.

Q. And do you recall generally the association at that time?

A. Yes, sir. He was liquor buyer for Glaser Bros.

Q. And in what business where you at that time?

A. I was a manufacturer's representative for two distilleries.

Q. Do you recall the names of those?

A. Yes, sir——

Mr. La Shelle: May it please the Court, we fail to see the materiality of this man's occupation or Mr. Stone's occupation in 1936 or thereabouts. It was years before this ever took place.

Mr. Fisk: I'm going into the qualifications.

(Testimony of David F. Logan.)

Mr. La Shelle: Before Hedgeside was even formed.

Mr. Fisk: I'm going into the qualifications of this witness.

The Referee: You may answer. Overruled.

Mr. Walsh: What was the answer—connected with what distilleries?

A. Kay Taylor Distilling Company of Frankfort, Kentucky and Krogman Distilling of Tell City, Indiana.

Q. What educational institutions did you go to, Mr. Logan?

A. Center College, Danville, Kentucky; Marion Institute, Marion, Alabama.

Q. Is that Marion Military Institute? [2099]

A. Yes, sir. U. S. Naval Academy and Annapolis Naval Academy.

Q. Do you recall approximately when you completed your education at the United States Naval Academy? A. In the fall of 1919.

Q. Did you continue in the military service after that or did you go into some private business?

A. I went with the Fiske Rubber Company of Chicopee Falls, Massachusetts.

Q. And how long were you with that corporation? A. Approximately ten years.

Q. In a general way, what was the work you did with the Fiske Rubber Company?

A. The beginning or the end?

Q. Just state in a brief, general way.

A. I started to work to learn the business, which

(Testimony of David F. Logan.)

was the tire business, and I left the business as assistant to the vice-president.

Q. When you left the Fiske Rubber Company, what, if any, institution did you become connected with?

A. I went with the Indiana Tire and Rubber Company of Akron, Ohio.

Q. And how long were you with that corporation?

A. One year.

Q. And after that what did you do?

A. I went to Europe as a manufacturer's representative. [2100]

Q. In any particular kind of business?

A. Rubber business, rubber machinery business and consultant thereto.

Q. How long did you remain in that work?

A. Three years.

Q. And that brings you up until approximately what date?

A. I returned to this country on the Europa on Labor Day, 1933.

Q. 1933? A. Yes, sir.

Q. Then what business were you in when you returned?

A. I engaged in the whiskey business at the advent of repeal, which as I recall, was the 7th of November, 1933.

Q. Where were you located in the liquor business after that period—what section of the country?

A. I did business in the State of California—Los Angeles, San Francisco.

(Testimony of David F. Logan.)

Q. Where did you make your headquarters?

A. In San Francisco.

Q. In that connection, did you do any business with Glaser Bros.?

A. Yes, I sold them a great deal of spirits.

Q. Now, were you ever connected with the Franciscan Farm & Livestock Company?

A. Yes, sir.

Q. When did you first become connected with that corporation?

A. At the date of their incorporation.

Q. And do you recall in what capacity you became connected [2101] with that corporation?

A. Well, I was a director and I was secretary of that corporation.

Q. And how long did you remain in those two positions with that corporation?

A. Until approximately June of 1949.

Q. Did you perform any services on behalf of Franciscan in a capacity other than as secretary?

A. Yes, sir.

Q. What services did you perform?

A. That of selling and advising regarding the functions of selling.

Q. You mean that you acted as a salesman selling the products of Franciscan Farm & Livestock Company.

A. Yes, sir.

Q. Were you acting in that capacity during the years 1946, '47 and '48?

A. Yes, sir.

Q. You stated that you acted in an advisory capacity regarding sales.

(Testimony of David F. Logan.)

A. And an actual capacity. Some things that did not concern me I was asked about; things that did concern me, I did them myself.

Q. Well, what services did you perform in an advisory capacity?

A. Well, it was not infrequent that you would be asked your opinion and to gather certain facts pertaining, as an illustration, to the charge that should be made on bottling of wine. [2102]

Q. During that period, what were the products sold and distributed by Franciscan?

A. Produced and sold, potato spirits, neutral grain spirits, whiskey, the by-products of its plant called distiller's spent, mash for cattle feed, the bottling of wine products, the distilling of grape brandy, and/or lees brandy.

Q. During the period '46 and '47, did Franciscan maintain any salesman for its products other than yourself?      A. No, sir.

Q. Who was your superior—

A. Mr. R. I. Stone.

Q. In connection with the work performed for Franciscan.

A. Mr. R. I. Stone was president of Franciscan—

Mr. La Shelle: Just a moment, your Honor, we object to the form of that question and move to strike out the answer as to who his superior was. That calls for his conclusion and opinion. The books show who the officers were—the president, vice-president, and so forth.

(Testimony of David F. Logan.)

The Referee: Overruled.

Q. At the same time that you were carrying on the work you have just testified to for Franciscan, were you carrying on your duties for Hedgeside?

A. Yes, sir.

Q. And to whom did you report in connection with the work you performed for Hedgeside?

A. Mr. Richard Stone.

Q. Did you report to anyone else than Mr. Richard I. Stone in connection with the work you performed for either of said corporations?

A. No, sir.

\* \* \* \* \* [2103]

Q. Did Hedgeside do a bottling work in connection with the operation of that distillery?

A. Yes, they did.

Q. Did Franciscan in connection with this distillery? A. They did.

Q. Did Hedgeside have a bonded warehouse?

A. They did.

Q. Did Franciscan have a bonded warehouse?

A. They did.

Q. Did Franciscan have a bonded warehouse throughout the entire period of its production?

A. No, they did not.

Q. Did Franciscan use the Hedgeside bonded warehouse? A. They did. [2145]

Q. Did Hedgeside use the Franciscan bonded warehouse? A. They did not.

Q. All of these questions I have in mind are the period of '46 through '48.



(Testimony of David F. Logan.)

The Referee: Do you understand that, Mr. Logan?

The Witness: No, I do not, sir.

The Referee: Mr. Fisk said all the questions he has in mind are from the period 1946 to 1948.

Mr. La Shelle: I think the questions themselves should show that because you never know when you're departing from that, your Honor. I object to that procedure; it's confusing to the witness, too.

The Referee: Very well.

Mr. Fisk: Is it all right if I state when I depart from that? Is that satisfactory? Well, all right.

Q. During the period from '46 to '48, inclusive, who determined for Hedgeside what purchases of distillery materials that were made?

A. Mr. Stone.

Q. Who determined from whom the material would be purchased?

A. Mr. Stone.

Q. What was the situation with respect to Franciscan in that respect?

A. Identical.

Q. In both instances, is that right?

A. Yes, sir.

Q. Who handled the accounting problems for Hedgeside during that period?

A. Mr. McMains.

Q. Were any outside accountants or CAP's employed? [2146]

A. Yes.

Q. Who were they?

A. Adolph Meyer & Company.

Q. Did they also handle accounting problems for Franciscan?

A. They did.

(Testimony of David F. Logan.)

Q. Who acted as Mr. Stone's personal attorney?

A. Mr. Phillip S. Ehrlich.

Mr. La Shelle: Just a moment, we object to who acted as Mr. Stone's personal attorney. I don't see what part that plays in here.

Mr. Fisk: I think it does.

The Referee: Mr. Fisk, you heard Mr. La Shelle's comment. What is your statement?

Mr. Fisk: Well, I want to show that Stone's personal attorney acted for Stone, Hedgeside and Franciscan during that period.

The Referee: You may answer. Overruled. Mr. Ehrlich—Mr. Philip Ehrlich.

A. Mr. Philip S. Ehrlich acted as attorney for Mr. Richard Stone—

The Referee: That's the question.

The Witness: Yes, sir.

Q. During that period, who acted as attorney for Hedgeside?

Mr. La Shelle: Same objection.

The Referee: Overruled.

A. Mr. Philip S. Ehrlich. [2147]

Q. Who acted as the insurance brokers for Hedgeside during that period?

Mr. La Shelle: We make the same objection, your Honor.

The Referee: Overruled. Who acted as insurance brokers? A. Erlanger, Reed & Meyer.

Q. And for Franciscan?

Mr. La Shelle: Same objection, your Honor.

The Referee: Same ruling.

(Testimony of David F. Logan.)

A. Erlanger, Reed & Meyer.

Q. Who determined for Hedgeside during that period when production would be commenced and when it would be discontinued?      A. Mr. Stone.

Q. And for Franciscan?      A. Mr. Stone.

Q. During that period, who negotiated the contracts for Hedgeside?

Mr. La Shelle: We make the same objection. That calls for the conclusion and opinion of the witness.

The Referee: Overruled. Who did?

A. Mr. Stone.

Q. And for Franciscan?      A. Mr. Stone.

Q. Now, according to your recollection, from time to time was Franciscan overdrawn in its commercial bank account at the American Trust Company?

Mr. La Shelle: We object to that, your Honor, upon [2148] the grounds that the records are the best evidence.

The Referee: Sustained.

Q. From time to time during that period, who determined where the production of Hedgeside was to be warehoused?      A. Mr. Stone.

Q. And in the case of Franciscan.

A. Likewise.

Q. Did you know of any instance during the production life of Franciscan where Hedgeside purchased whiskey from Franciscan?

A. I do not, sir.

The Referee: Read that question and answer?

(Testimony of David F. Logan.)

(The last question and answer were read by the Reporter.)

Q. Do you know what it cost Franciscan to produce the 2859 barrels of whiskey sold Barnhill in '46 and '47?

Mr. La Shelle: We object to that, your Honor, upon the grounds it calls for the records of Franciscan are the best evidence.

The Referee: Overruled. Do you know the cost?

A. Approximately.

Q. What did it cost approximately?

Mr. La Shelle: We make the same objection, your Honor.

The Referee: Overruled.

A. Around 65 to 67½ cents.

The Referee: A what?

The Witness: An OPG naked. [2149]

Mr. La Shelle: I guess the cook made a profit.

Mr. Fisk: What's that?

Mr. La Shelle: I said it looks like all hands and the cook made a profit—everybody.

Q. Mr. Logan, I show you Petitioner's Exhibit 1 in evidence which is negotiable warehouse receipt book of Hedgeside. I point to warehouse receipt 351, which is the first warehouse receipt appearing in that book, and in particular, to the statement "lot number, blank, storage 10 cents per bbl per month from July 28," and so forth "handling 25 cents per barrel."

Mr. La Shelle: What receipt number are you referring to—351?

(Testimony of David F. Logan.)

Q. Do you know what that (indicating)——

Mr. La Shelle: Is that printed or typed?

Mr. Fisk: The word storage is printed, but “blank” is—in the blank opposite storage, is inserted the figures “10 cents”; in the blank opposite the printed word handling is inserted the figures “25 cents.”

Q. Do you know what that figure 10 cents storage per month represents?

Mr. La Shelle: Just a moment, your Honor, we will object to that question. Counsel is looking at a cancelled warehouse receipt No. 351 issued to J. J. Dunbar & Co., Seattle, Washington. It is incompetent in this case; it has nothing to do with it. You might find it may be the same on the other warehouse receipts, but it [2150] could be entirely different deal.

Mr. Fisk: Well, I just picked the first one in the book, your Honor. I’ll go through all of the, if you want.

The Referee: Overruled. Ask him what that means. Overruled.

Q. Did you get the question?

A. What does it mean?

Q. Yes, what does it indicate?

A. Ten cents per barrel.

Mr. La Shelle: Just a moment, your Honor, the best thing is what it speaks for itself. Here is the written document and he is to give his conclusion as to what it means and to alter or vary or contradict the terms of a written document.

(Testimony of David F. Logan.)

The Referee: Not necessarily. I think he is going to explain what it means. Can you explain, Mr. La Shelle?

Mr. La Shelle: Well, it says——

The Referee: I am asking you whether or not you can explain what that means.

Mr. La Shelle: I don't have to; it tells me.

The Referee: Well, then the Court wants to know what it means.

A. In the language of the trade——

The Referee: Overruled. You may answer.

A. (Continuing): Which is the heritage of the whiskey [2151] business which is over a hundred years of age, the storage is gauged on barrels of fifty gallons or less at 10 cents per barrel per month, the warehouseman to exercise due care and diligence in taking care of the property of others. It is a rental of space, a rack space is what the 10 cents means.

Mr. La Shelle: May I ask the Court? Have you seen this? Is there any doubt in your mind that the storage is 10 cents per barrel per month?

The Referee: There is after hearing Mr. Logan's answer. I think Mr. Logan has certainly clarified the reason for it.

Mr. La Shelle: The reason for it. You know how to pay storage, don't you?

The Referee: For what?

Mr. La Shelle: For what you have stored.

The Witness: You see, certain services for your 10 cents.

(Testimony of David F. Logan.)

Q. Was that charge in effect during the years '46 through '48 in connection with any barrels of whiskey or spirits grain stored at Internal Revenue Bonded Warehouse No. 2?

A. Yes, sir, it was continuously.

Q. Who fixed that monthly charge on behalf of Hedgeside?      A. Mr. Stone.

Q. Do you know when it was fixed?

A. It was fixed in January of '39.

Q. Now, was a similar charge in effect in connection with [2152] the issuance of non-negotiable warehouse receipts—

Mr. La Shelle: We make the same objection—

Q. (Continuing): during that period?

Mr. La Shelle: Just a moment. (Continuing) as incompetent, irrelevant and immaterial. You might make a deal with one person and charge him storage where another person you don't.

The Referee: Overruled.

A. It makes no difference whether it's negotiable or non-negotiable, the rate is the same.

Q. And it was during that period at Hedgeside, is that right?      A. Yes, sir.

Q. Now, looking at the same warehouse receipt, 351, will you explain what the charge "handling 25 cents per barrel" is?

Mr. La Shelle: We make the same objection, your Honor, it's incompetent, irrelevant and immaterial and the document speaks for itself.

The Referee: Overruled.

Mr. La Shelle: I would like the record to show

(Testimony of David F. Logan.)

that the Court has overruled that objection without even looking at it, doesn't know what it is.

The Referee: The record so shows. You may answer, Mr. Logan.

A. Twenty-five cents handling charge means, in the language of the trade, taking it out of a box car, taking off of a truck or other conveyance that brought it there, taking it into the [2153] warehouse, checking the serial numbers of the government form, doing everything that you can do to inspect that barrel and nesting it into its location. That is the 25 cents in. The 25 cents out is identically the same thing, only reversed. It puts it on a carrier so that it may be taken away.

By the Referee: Are all those explanations in that 25 cents? A. No, sir.

Q. They are not. Would the Court have known all that?

A. No, sir, it is a trade practice that is done taken to mean that.

By Mr. Fisk: Q. And who fixed that charge in this case at Hedgeside? A. Mr. Stone.

Q. And approximately when?

A. January, 1939.

Q. Now, from that time up until the bankruptcy of the corporation, was there ever any change in either of those two charges? A. No, sir.

Q. Were similar charges made in connection with the warehousing at the Franciscan Internal Revenue Bonded Warehouse? A. Yes, sir.

Q. And by similar, I mean 10 cents per month



(Testimony of David F. Logan.)

in the case of storage and 25 cents per barrel in and out for handling.

A. Yes, sir.

Q. And in each of those instances, who fixed the charges?

A. Mr. Stone.

Q. During this period from '46 to '48, inclusive, did the [2154] Hedgeside Distillery Corporation advertise or solicit customers for storing of spirits or whiskey in its Internal Revenue Bonded Warehouse?

Mr. La Shelle: We object to that, your Honor, upon the grounds it calls for the conclusion and opinion of the witness and if there was any advertisement or solicitation, that is the best evidence.

The Referee: Overruled.

A. No, sir, it solicited no warehouse business.

Q. Did Hedgeside during that period warehouse—

Mr. La Shelle: May I have the page number of that please?

The Reporter: 156.

Q. Did Hedgeside during that period warehouse any of its own production in Internal Revenue Bonded Warehouse No. 2?

A. Yes.

Q. Did it warehouse all of its own production?

A. Yes, sir.

Q. Were there any instances where it warehoused its production in other warehouses?

A. Yes, sir.

Q. What other warehouses?

A. H & A Warehouse in Stockton.

Q. Were there any instances where Franciscan's production was warehoused in Internal Rev-

(Testimony of David F. Logan.)

enue Bonded Warehouse No. 2 during that period?

A. Yes, sir.

Q. Were there any instances where Hedgeside's production [2155] was warehoused in Franciscan's Internal Revenue Bonded Warehouse?

Mr. La Shelle: Your Honor, these questions have all been asked and answered.

The Referee: Are you making an objection, Mr. La Shelle?

Mr. La Shelle: Yes.

The Referee: Overruled.

A. No, sir, Hedgeside did not warehouse.

Q. Will you describe to the Court the purpose and function of Internal Revenue Bonded Warehouse No. 2 in connection with the operations of Hedgeside?

Mr. La Shelle: We will object to that, your Honor, upon the ground that the answer to that question will invade the legal province. The function of that warehouse is beautifully and very detailed laid out by the ATU laws and provisions.

The Referee: And also by one of your witnesses, but not Mr. Fisk's witness as yet. Overruled.

Mr. Fisk: Will you answer the question?

The Witness: Would you repeat the question please?

(The last question was read by the Reporter.)

A. The purpose and function of warehouse No. 2, Internal Revenue Bonded, is that the manufacturer, which in this case was Hedgeside, may dis-

(Testimony of David F. Logan.)

till his spirits grain, whiskey or otherwise, in bond and have a warehouse acceptable to the government in which he may place that satisfactory to the government, without the [2156] payment of the \$9.00 per rate of tax.

Q. Did it serve any purpose in connection with the bottling operation carried on by Hedgeside?

A. Yes, sir.

Q. Will you describe that to the Court?

A. Having an internal bonded warehouse, it was possible for the distiller to take merchandise out of bond with the minimum lapse of time that money had been borrowed, quickly paying the tax on it, putting the stamp on the barrel head, taking it into the bottling house, dumping it in a tank, producing it in proof and bottling it for the purpose of making a profit in bottling.

Q. Were there any instances during this period where Hedgeside permitted storage of production other than Hedgeside or Franciscan where there was no bottling operation involved?

Mr. La Shelle: We object to that upon the grounds it is incompetent, irrelevant and immaterial and the records of Hedgeside bonded warehouse are the best evidence as to what was placed on storage there, your Honor.

The Referee: Mr. Fisk?

Mr. Fisk: I submit that here is a man who is an officer and director of both corporations during this entire period. He was functioning on behalf of both corporations and handling these types of transac-

(Testimony of David F. Logan.)

tions and if there were any such instances, he should know about them and at any rate, the fact that he does know of any, if that be his answer, would show that that was [2157] not a business operation carried on by Hedgeside or Franciscan.

The Referee: And if there were any instances, they would appear in the records, would they not?

Mr. Fisk: That's right, but you couldn't necessarily tie it in from the records without a great deal of—you would have to run through every instance where anything was stored at either of the two warehouses and then determine where the production came from and whether or not there was a bottling contract and I would say that it would make the examination most protracted to do that.

Mr. La Shelle: Your Honor, as a practical matter, that then results in this. Mr. Fisk asks that you wipe out the best evidence rule here because it's a burden for him to prove it so then he wants to shift the burden to me on cross-examination. The only way I can impeach this witness is to bring in and do all that in the records. The burden is on him; not on me. The rule says that the best evidence is the records to be brought in. He wants to make it easy for himself and then if I want to impeach the witness, I've got to go through all the records.

The Referee: Sustained.

Q. Did you ever, during this period, obtain storage in either of said warehouses where the produc-

(Testimony of David F. Logan.)

tion was neither that [2158] of Hedgeside nor Franciscan nor any bottling contract involved?

Mr. La Shelle: Well, we make the same objection that was heretofore made upon the grounds that this question is designed to do indirectly what he was trying to do directly in the last question.

The Referee: Overruled. He said: Did you.

A. Yes, sir.

Q. In how many instances?

Mr. La Shelle: We make the same objection.

The Referee: Overruled.

The Witness: Would you read the question back again?

(The last question was read by the Reporter.)

A. The answer to that would be no, no, I never did where there was no bottling involved.

Q. Well, do you know of any instance where there ever was any storage in either of those two warehouses during that period where it did not involve either the production of those two units or a bottling contract?

Mr. La Shelle: We make the same objection, your Honor, that the records are the best evidence as to what was stored and in what instances and under what conditions.

The Referee: Overruled. Do you know of any?

A. One.

Q. Do you recall the name of the owner? [2159]

A. Yes, sir.

Mr. La Shelle: We make the same objection.

The Referee: Overruled.

(Testimony of David F. Logan.)

Q. State it.

A. Austin Nichols in New York had two or three hundred drums of spirits. It was a personal favor looking to further things that were going to affect it in the trade circles. It was done as a favor. When he didn't come through with his end we forced the purchase out of bond and made him take it elsewhere.

Mr. La Shelle: We move to strike out the answer on the grounds it is not responsive to the question and constitutes the conclusion and opinion of the witness as to giving favors and forcing things out.

The Referee: The part with reference to storing with Austin Nichols will remain in and the balance stricken.

Q. In the case of Austin Nichols, how many packages were involved?

A. Three or four hundred.

Q. And how long did they remain?

A. Three or four months.

Mr. La Shelle: Just a moment, we object to that, your Honor, as to that again the best evidence as to how long they remained there are the records of the company.

The Referee: Sustained. [2160]

Q. During this period, were there in operation according to your knowledge, any commercial warehouses where packages of whiskey or distilled spirits could be warehoused?           A. Yes, sir.

(Testimony of David F. Logan.)

Mr. La Shelle: Just a moment. Will you read that question; I didn't get it?

(The last question and answer were read by the Reporter.)

Mr. La Shelle: I take it by that you mean, Internal Revenue Bonded Warehouse. Is that what you mean?

Mr. Fisk: I'll let the witness interpret the question and explain it with his answer.

Mr. La Shelle: We will object to the question, your Honor, upon the grounds it is incompetent, irrelevant and immaterial as to what warehouses might be scattered throughout the state.

The Referee: Read the question again.

Mr. La Shelle: And I also don't understand the word "commercial."

(The last question and answer were read by the Reporter.)

The Referee: Strike the answer out.

Mr. Fisk: I'll change the word "commercial" to "public."

Mr. La Shelle: We object to the form of that [2161] question, your Honor, as to what a public warehouse means.

The Referee: Sustained.

Mr. La Shelle: It's governed by law. Describing the type of warehouse he has seen, the number of it, or who owns it or something, is going into the question of law here.

Q. During this period, do you know of any warehouses in San Francisco where you may store

(Testimony of David F. Logan.)

packages of goods such as whiskey and distilled spirits?

Mr. La Shelle: We object to that, your Honor, upon the grounds it is incompetent, irrelevant and immaterial whether there is one or fifty warehouses of that nature in San Francisco.

The Referee: Mr. Fisk, you are talking about any kind of a warehouse where you can store liquor?

Mr. Fisk: They can be stored, yes, sir.

The Referee: You are not concerned about storing bulk goods or bonded goods or cases of bottles or what—

Mr. Fisk: I thought I said packages, and the word "package" as I understood it, your Honor, in this proceeding refers to drums or barrels. That is the terminology that has been used throughout in this proceeding but I will revise it if there is any question.

The Referee: You revise it.

Q. During this period, '46 through '48, do you know of the [2162] existence of any warehouse where you could warehouse barrels of whiskey and/or drums of spirits?

Mr. La Shelle: We make the same objection, your Honor, that it is incompetent, irrelevant and immaterial as to whether there were other bonded warehouses in California, San Francisco or any place. It has no probative value in this case on any issue.

The Referee: What is the purpose, Mr. Fisk?



(Testimony of David F. Logan.)

Mr. Fisk: The purpose of it is simply to show that Hedgeside and Franciscan too, a portion of the time, as a convenience to their operation there, had a bonded warehouse but there were other bonded warehouses that they could have used which wouldn't have been as convenient, but they could have used others. There were a couple in San Francisco; there is one in Stockton and, in fact, Franciscan did use Hedgeside's when it had none.

The Referee: Sustained.

Q. Did Hedgeside file its charges, its rates of charge in storage and handling in connection with its warehouses, with the Public Utilities Commission at any time during this period?

Mr. La Shelle: We object to that, your Honor, upon the grounds that the best evidence would be the filing of the documents themselves in question.

The Referee: Sustained.

Mr. Fisk: Well, if they didn't file them, your [2163] Honor, I don't know how we're going to produce the document. Certainly a document can't be the best evidence rule because there was no filing.

The Referee: Well, they could have filed them but they probably didn't file them but this witness wouldn't be the final answer, would he—whether they did or didn't?

Mr. Fisk: But certainly the objection that it's a violation of the best evidence rule is certainly no ground. The best evidence rule is the best evi-

(Testimony of David F. Logan.)

dence is the document. If there was no document, it couldn't possibly be the best evidence rule.

The Referee: The Court doesn't think that the answer of this witness here would be the best evidence as to whether they did or did not.

Q. Mr. Logan, when the rate of 10 cents per month storage charges was fixed for Hedgeside, was there any estimate made of whether or not that would render a profit on the operation?

A. No, sir.

Q. During your entire regime with that corporation, was there ever any effort made to determine whether or not the operation were a profitable one?

A. No, sir.

Mr. La Shelle: We object to that, your Honor, upon the grounds it's incompetent, irrelevant and immaterial whether there is any cost accounting or profit on that particular operation or not. Many companies take a loss [2164] in one department to secure an overall profit.

The Referee: Overruled. You said there never was. A. No, sir.

Q. Do you know whether or not the charges fixed in the Hedgeside operation and the Franciscan operation are higher or lower than the charge of warehouses storing bulk whiskey and spirits in barrels and drums than the charges of warehouse operations not carried on in conjunction with a distillery or bottling operation?

Mr. La Shelle: We make the same objection,

(Testimony of David F. Logan.)

your Honor, that it is incompetent, irrelevant and immaterial.

The Referee: Sustained.

Mr. Fisk: Might I be heard on that?

The Referee: Yes.

Mr. Fisk: If the Court please, our position here is simply this. That this Internal Revenue Bonded Warehouse here in the case of Hedgeside and in the case of Franciscan, are not public warehouses operated for a profit. These others are. They are just a convenient operation carried on in conjunction with a distillery or a bottling operation. They are not necessary but they are convenient to do it. They are not an operation carried on for a profit and they are not essential and I want to show that the charges here have no relationship; they're just arbitrary charges picked out of thin [2165] air because of the custom of the trade, entirely without relation to profit arrangement. That is not the case of the public warehouse where it is operated as an independent operation and filed with the Public Utilities Commission.

Mr. La Shelle: May it please the Court, I think we are aware in this case, throughout the distillery business, you have got to have a bonded warehouse and within either forty-eight or seventy-two hours, I have forgotten which—I think it's the latter, seventy-two—you must get your spirits barrelled down wherever they happen to be, say out in a receiving tank, so that you must get into an IRBW within three days of whatever you manufacture.

(Testimony of David F. Logan.)

That's so the government doesn't take any chance of losing its tax. Now, any distillery that has an operation of that kind almost must have at least within pretty close reach, an IRBW. They store for the account of whomever they may manufacture the whiskey for. If it's their own production, they store it for themselves. Now, whatever charges they want to make and do make and this witness has already stated that those charges are in keeping with the custom of the industry, whether or not they're lower or higher than some fellow that operates a bonded warehouse but has no distillery in connection with it is entirely immaterial. For example, in the South End [2166] Warehouse in San Francisco, if I'm not mistaken, (I'm not positive of my facts here) but I think that practically one hundred percent of their business is handling goods shipped in bond. In other words, the wholesaler has a couple of hundred barrels of Burnheim whiskey and he brings out a certain amount at a time and in order to keep his cost down, he ships from Kentucky out to San Francisco and has them bottled out here and that's what that warehouse does. They have a tax-paid bottling room and a bottling bond room and a storehouse and it's used essentially for shipping in bond. Now, they're operated in a slightly different operation and whether they're higher or lower here, I say, is not competent in this case. There is no probative value on any issue whatsoever.

(Testimony of David F. Logan.)

Mr. Fisk: In response to that, I say I think it has everything to do with it. Here is an operation that is carried on as a part of a distillery or a bottling operation without any idea whether it is a profitable transaction for the simple reason that the distiller is not in the business of the warehousing for a profit; he is in the business of a distiller for a profit, the business of a bottling operation for a profit. The other matter is simply a convenience. It is not necessary under the law to have a bonded warehouse. Franciscan has operated without a bonded warehouse. [2167] It simply is a convenience and it is a convenience that they carried on at an arbitrary figure of 10 cents entirely without regard to a profit. Now, your Honor well knows a public warehouse, whether it be internal revenue bonded warehouse or whether it be operated as a warehouse for a profit, is under the control of the Public Utilities Commission. **He must file his rates** and he cannot earn in excess of a fair profit and it also goes, as the Court well knows, that all utilities charge as high a rate as they are permitted to do under the regulatory body so that it is definitely pertinent here where those public warehousemen were definitely within the law in the business of acting as a public warehouseman for a profit and accordingly file with the Public Utilities Commission the rates they charge.

Mr. La Shelle: Your Honor, I think that what comes under a public warehouse and a private ware-

(Testimony of David F. Logan.)

house is very well defined by law in this state. There are quite a few laws on it and there are many cases interpreting them. I have read them and without citing them to you, I assure you there are a great many cases. Now, if Mr. Fisk wants to prove that this is or is not a public warehouse, why if he thinks he's got a legal point there he can go right ahead, but let him go ahead according to the rules of evidence and what is competent and [2168] what isn't. Let him show what their operation was up there at Hedgeside. Let him show what they did, which he has more or less, and then he comes in and says: "Now, the law says that an operation like this should have such and such a license," but to go into the question as to whether or not they charge more or less than some other warehouse in a different classification has nothing whatsoever to do with this case, remotely or directly or indirectly.

Mr. Fisk: Your Honor, in response to counsel, I say that I am satisfied and he can produce the volume of cases that he has indicated that holds up his opinion. The law is very clear. It is in very general terms and it is absolutely essential to produce evidence along the lines of what we are doing to fall within the terms of that statute, which is very, very general.

Mr. Casey: There are three statutes involved, your Honor. One is Section 3440 which both respondents are pleading. Now, Mr. La Shelle has filed a memorandum saying that there is an excep-

(Testimony of David F. Logan.)

tion to that statute when the facts fall within Section 3440. To come within 3440.5, the person operating the warehouse has to be in the business of warehousing for profit as defined in the Uniform Warehouse Receipts Act and what we are trying to do now is show that this particular warehouse was not in the business of warehousing for profit as [2169] defined by that code.

Mr. La Shelle: Your Honor, I have had many statements, or heard many statements by opposing counsel as to what the law is, but they never cite a case in this courtroom. Let them come in with a case now to show that evidence of this character is competent. I'd like to see one. Common sense tells you it isn't competent.

Mr. Fisk: Read the statute.

The Referee: Mr. La Shelle, Mr. Casey is enlightening the Court at the moment. He comes up with an entirely different statement and that is namely the statute which I imagine is going to be Mr. Walsh's main defense, is that correct?

Mr. Walsh: Definitely.

The Referee: The Court will change its previous ruling and permit you to answer, Mr. Logan.

Mr. La Shelle: I would like to interpose this further objection, your Honor. If there are any other warehouses and rates on file as they claim they have public warehouses which they would be, then this evidence violates the best evidence rule.

(Testimony of David F. Logan.)

Let them come in, if they think it's competent, with evidence as to what they charge.

The Referee: Mr. La Shelle, the point before the Court now is that under 3440 with reference to warehouses, [2170] certain facts and certain conditions must be met. Now, certainly that is relevant and competent.

Mr. La Shelle: Yes, but this——

The Referee: This has nothing to do with cases. We are talking now about the law.

Mr. La Shelle: That's what I'm talking about. How does it prove whether their rates are higher or lower than anyone else's under 3440.5 or any other section?

The Referee: We will hear the question again.

(The last question was read by the Reporter.)

Mr. Fisk: The question is pretty complicated.

The Referee: Let the record show that Mr. Fisk's question has been withdrawn.

Q. Mr. Logan, do you know whether or not the charges made by the independent internal revenue bonded warehouses, that is, by independent, I mean those internal revenue bonded warehouses carrying on only a warehouse operation, are higher or lower than these charges made by Hedgeside and Franciscan during the period '46 to '48, inclusive?

The Referee: Mr. La Shelle, are you satisfied if your objections and the comments with reference to Mr. Fisk's previous question are applied to this one?



(Testimony of David F. Logan.)

Mr. La Shelle: No, I would like to make the objection again, your Honor, that it is incompetent, irrelevant and immaterial in this case, that there is no foundation laid for the testimony whether this witness [2171] is qualified to answer the question.

The Referee: Overruled. Do you know whether they're higher or lower?

A. Yes, sir, I do know.

Q. And what are they—higher or lower?

A. They are higher.

Q. How much higher?

Mr. La Shelle: We make the same objection as just heretofore made, your Honor.

The Referee: Overruled.

Q. How much higher?

A. They are from 10 to 20 cents a barrel higher per month and the storage charges—I mean, the withdrawal charges are from 10 to 20 cents a barrel higher. Instead of 25, it would be 35 or 45 cents higher.

The Referee: Where are they higher—in other independents or at——

The Witness: At all warehouses——

Mr. La Shelle: Just a moment, please, Mr. Witness. We make the same objection to the Court's question.

The Referee: Overruled.

A. At all warehouses engaged in the storing of goods where that is their occupation, such as Haslett in Fresno, Haslett in Stockton, H & A in

(Testimony of David F. Logan.)

Stockton, San Francisco Warehouse, South End Warehouse, Hollywood Storage and others on the coast, because that was a part of my business as a broker and as a manufacturer's [2172] agent, to know rates just as much as it was selling. The same rates, your Honor, applies to whiskey producing in the State of Kentucky, which is my home and I lived there for fourteen years; I made a living at it.

The Referee: We will have a recess.

(A brief recess was taken.)

By Mr. Fisk (Continuing): Q. Mr. Logan, in regard to the storage by Austin Nichols you testified to, was he ever requested to remove his goods from the warehouse? A. Yes, sir.

Mr. La Shelle: Well, just a moment, we move to strike out the answer pending an objection. We object to that.

The Referee: So ordered.

Mr. La Shelle: We object to that on the grounds it is incompetent, irrelevant and immaterial whatever contractual obligations or transactions were had between Austin Nichols and Hedgeside in this case.

The Referee: Overruled. He was asked to remove his goods.

The Witness: Yes, sir.

Q. For what reason?

Mr. La Shelle: We make the same objection, your Honor.

The Referee: Overruled.

(Testimony of David F. Logan.)

A. Because their profit on the others was not forthcoming. [2173]

By the Referee: Q. What do you mean by that?

A. I mean, you could not afford to carry just storage unless you got something in bottling on the other side.

By Mr. Fisk: Q. And had he promised the bottling contract? A. Yes, sir.

Mr. La Shelle: Just a moment, your Honor—

Q. And then refused—

Mr. La Shelle: —I want to interpose the same objection, your Honor.

The Referee: Are you finished, Mr. La Shelle?

Mr. La Shelle: Yes, the same objection.

The Referee: Overruled. Now, read Mr. Fisk's question.

(The last question was read by the Reporter.)

Q. He promised to enter into a bottling contract.

A. Yes, sir.

Q. And subsequently refused to do it.

A. Yes, sir.

Mr. La Shelle: We make the same objection.

The Referee: Same ruling.

Q. Mr. Logan, you testified that at times Hedge-side stored its production at the H & A Warehouse in Stockton. Did it ever do so immediately upon barreling down of the production?

Mr. La Shelle: We make the same objection, your Honor, that it is incompetent, irrelevant and immaterial [2174] in this case.

(Testimony of David F. Logan.)

The Referee: Mr. Fisk, what is the relevancy of this, whether or not they stored it at the H & A?

Mr. Fisk: I simply wanted to show that at times, and this is in response to Mr. La Shelle's contention, that under the law you couldn't produce on one day and barrel it down and store it on the same day, unless you had a warehouse on the premises.

Mr. La Shelle: No, I didn't say that. I said you have to get it in a bonded warehouse within seventy-two hours of its production in a bonded warehouse.

Mr. Fisk: I just wanted to show as a practical matter we did do that and stored over at H & A at Stockton and not at Hedgeside.

The Referee: Would it alter the——

Mr. Fisk: If I remember the record correctly, and I think I am correct in this, he stated that it was impossible for us to function without an internal revenue bonded warehouse on the premises because it had to be stored within seventy-two hours and as a practical matter we couldn't do that. That's what I got out of his statement.

Mr. La Shelle: I didn't say that. I said the law says you have to put it in bond within three days' production and for that reason, usually distilleries have one right there as a convenience. Now, for example, [2175] when the IRBW at Franciscan was not working and the one at Hedgeside was close enough, as a practical matter they could do it. Maybe they could do it as a practical matter in Stockton. Maybe, if there was one in Sacramento,

(Testimony of David F. Logan.)

they could do it. But I fail to see where it has any relevancy in this case.

Mr. Fisk: Well, the relevancy is if counsel is willing to admit that it is not essential or necessary to the operation of the distillery to have an internal revenue bonded warehouse, why I'll drop the testimony. I simply have taken the position and I am endeavoring to prove through this witness that the having of the internal revenue bonded warehouse on the premises was simply a convenience to the operation. As a practical matter it may be carried on with an internal revenue bonded warehouse elsewhere, in San Francisco, Stockton, Sacramento, Yountville, or what not.

The Referee: Mr. La Shelle, you admit that provided it is barrelled down within the statutory period, it was——

Mr. La Shelle: I am not admitting anything. My statement is this, your Honor, that the law provides it must be barrelled down within, I think it is seventy-two hours— Am I right on that, do you recall? I think it is seventy-two hours. I'm not sure, but it's some relatively short period of forty-eight to seventy-two [2176] hours, you must get it. Now, if a distillery does not have a warehouse, somehow or other it has got to get it in bond or it's in dutch with the Federal Government as a violation of the law. There is no question about that. This is a matter of law.

The Referee: I just asked you that, Mr. La Shelle, and you said you are not admitting any-

(Testimony of David F. Logan.)

thing, so if you are not, I'll have to permit Mr. Logan to answer the question. Your objection is overruled.

Mr. La Shelle: We are satisfied with our position on the objection.

The Referee: Very well.

The Witness: What is the question again, please?

(The last question was read by the Reporter.)

Mr. La Shelle: Now, just a moment, what do you mean by the barreling down of the production? I don't understand that. It has to be barrelled down in the warehouse, doesn't it?

The Referee: Let the record show, Mr. La Shell, you said you were satisfied with your objection. Now, evidently you are not, so the Court will permit you to change the objection.

Mr. La Shelle: We do object to the form of the question and because upon its re-reading, I don't know exactly what Mr. Fisk means by barreling down.

Mr. Walsh: Mr. La Shelle has used that term—

Mr. Fisk: Throughout the proceeding, and so have the witnesses.

The Referee: You may answer. Overruled.

The Witness: May I clarify it?

The Referee: I would rather, Mr. Logan, that you answered the question and then clarify it.

The Witness: All right, sir.

A. Yes, sir, it has been expedited immediately after barreling down.

(Testimony of David F. Logan.)

Q. Now, give your explanation.

A. Now, that "immediate" does not mean what it sounds like. You don't have to immediately. You have two tanks and a cistern that will hold twenty thousand gallons or ten or whatever you want to. So what Mr. Sichel means, according to the law, you can't hold the merchandise after it is barrelled down, more than seventy-two hours in the cistern room, but no one wants to, as a matter of transportation facilities. You take it out of the tank, put it into the barrel, put the indices on the end of the barrel; then you can transport it at four o'clock this afternoon, tomorrow or the next day, but you cannot keep it barrelled down longer than seventy-two hours in the cistern room, but nobody wants to. That's long enough to get it expedited out of there.

The Referee: Now, have you answered the question with reference to the warehousing at Stockton?

The Witness: Yes, sir. [2178]

Mr. Fisk: That's all.

### Cross Examination

By Mr. La Shelle: Q. Mr. Logan, on occasion here a little while ago, we had occasion to have the court reporter read back one of your answers with reference to your signing the minutes, you know, of the Franciscan board, and one of your answers was that they would give you a paper as to what had transpired at the meeting and you would sign it.

(Testimony of David F. Logan.)

A. (Witness nods affirmatively.)

Q. Am I correct in my summary of your testimony on that?

A. (Witness nods affirmatively.)

Q. Now, I think you have already identified your signature on this here, Mr. Logan?

A. Yes, I have.

Q. That is D. F. Logan and the other signatures are R. I. Stone, Michale M. Falkoff and Marcus Glaser.

A. Yes, sir.

Q. And then immediately above that is a type-written statement which read as follows: "We the undersigned directors hereby consent to the holding of the foregoing meeting and have read and do hereby approve of the foregoing minutes thereof." Now, you stated that when you signed this paper pasted in on page 22, that you never saw the piece of paper for the balance of the minutes on page 21, is that correct?

A. That is correct, sir.

Q. So that when you signed this it is your testimony that you signed it not knowing what you were signing.

A. No, sir. [2179]

Q. How did you know what you were signing if you didn't see page 21?

A. I signed for this part up here (indicating). I signed for what's on 22.

Q. In other words, you felt that number 22 was the complete minutes of the meeting?

A. Yes, sir.

Q. And on page 22, do you find anything which



(Testimony of David F. Logan.)

shows as to the date of the meeting or where it was held?      A. No, sir.

Q. And you knew, as your knowledge as a director, did you not, that director's minutes usually show the date that it was held and where it was held?

The Referee: What is your answer, Mr. Logan?

A. I perhaps overlooked it.

Q. When you signed this signature which is now on page 22, is it your testimony now to the Court that you felt that that was the entire minutes of that meeting?      A. Yes, sir.

Q. Did anyone tell you that it was?

A. No, sir.

Q. You signed other minutes in this book the same way, did you?

A. I presume so, except two.

Q. I direct your attention here to page 23 and that is your signature there, isn't it again, D. F. Logan?      A. Yes, sir.

Q. And the same typewritten provision "we, the undersigned directors, hereby consent to the holding of the foregoing meeting and have read and do hereby approve the foregoing minutes thereof." And directing your attention to the top of the page, it states in capital letters: "Minutes of Special Meeting of [2180] Board of Directors of Franciscan Farm & Livestock Co. held March 15, 1948." Had you ever served on a board of directors before this board?      A. Before this particular—

(Testimony of David F. Logan.)

Q. This particular company? A. Yes.

Q. And had experience at board meetings and attended board meetings and signing minutes?

A. No, sir.

Q. You were on the board but never attended a meeting or signed the minutes? A. One.

The Referee: One what, Mr. Logan?

The Witness: One meeting.

Mr. Walsh: I wonder if he understands the question, your Honor.

The Referee: Mr. La Shelle, that's why I—— You mean, there was one other corporation that you belonged to?

The Witness: Yes, sir.

The Referee: At which you attended one meeting.

The Witness: Yes, sir.

Q. And did you sign the minutes of that meeting? A. Yes, sir.

Q. And when those minutes were presented for your signature, you saw the general form, did you not, of where they give the date and the place of the meeting at the beginning of the minutes?

A. I never paid any attention.

Q. Now, directing your attention again to page 22 and in reading the top part of 22, what on that page, either singly or [2181] taking the whole page together, led you to believe that they constituted the entire minutes of the board?

A. The importance of your war grain powers which I was very much interested in at that time.

(Testimony of David F. Logan.)

Q. And that led you to believe that it constituted the full minutes of the board.           A. Yes, sir.

Q. Where was it that you signed these minutes?

A. My desk at Hedgeside.

Q. Was anyone present besides Stone?

A. Pardon?

Q. Was anyone present besides Stone?

A. Not to my knowledge.

Q. Now, Mr. Logan, on a couple of occasions here, (I have it twice in my notes) you stated that while there were occasions when Franciscan stored its production in Hedgeside's IRBW, that at no time did Hedgeside production go to the IRBW at Franciscan.

A. To the best of my knowledge, there were no occasions.

Q. And what do you base that on, Mr. Logan?

A. Observation.

Q. Do you think you could be mistaken?

A. Yes, sir, I could be mistaken.

Q. You haven't checked that.           A. Pardon?

Q. You haven't checked the records to see——

A. No, sir, I have no access to them.

Q. Now, Mr. Logan, do you know of your own knowledge whether or not at any time while you were connected with Franciscan, [2182] Marcus Glaser was paid a salary by Franciscan in any capacity?           A. I only know it by hearsay.

Q. Have you any knowledge with reference to his activities in any capacity?           A. No, sir.

Q. Did you ever see him up there?

(Testimony of David F. Logan.)

A. Never.

Q. At either Hedgeside or Franciscan, I mean.

A. No, sir.

Q. Did you know anything about a dispute between Mr. Glaser and Mr. Stone over the selling of any whiskey from Franciscan to Hedgeside?

A. No, sir.

Q. Did you ever know of a dispute with reference to the price of whiskey sold by Franciscan to Barnhill after the sale was completed?

A. No.

Q. Well, I mean up to the time that you took the stand this afternoon.

A. No, sir——

Q. So that as far as you know——

The Referee: Pardon me, were you going to complete your answer?

A. (Continuing) I would like to qualify it by saying he asked me did I know that, of a dispute. I take the word dispute. I only know this and I will qualify it. That I did hear from Stone "I have given Glaser a \$14,000 credit rebate." So I did know that.

Q. But you didn't know of any dispute which led up to any——

A. I knew that he gave him a \$14,000 rebate, and it was so referred to. [2183]

Mr. Fisk: Well, now, if the Court please, could I have a couple of questions read back?

The Referee: Wait a minute, Mr. La Shelle. I was going to stop Mr. Fisk if he was going to ex-

(Testimony of David F. Logan.)

amine the witness but I will permit him to hear the questions read naturally.

Mr. Fisk: I would like to read back about three questions and answers.

(The last three questions and answers were read by the Reporter.)

Q. Now, when was it that Mr. Stone made some mention to you of, I think you called it a rebate. I think we can refer to it as a credit memorandum. When was that to the best of your recollection that Stone told you about it?

A. That was in the spring of '48.

The Referee: What?

The Witness: '48—1948.

Q. And would you say that that was sometime in March of '48?

A. Yes, sir, to the best of my knowledge.

The Referee: What was that?

The Witness: To the best of my knowledge.

Q. And with reference to the occasion of your call from Mr. Luckman from the White House, which is fixed rather firmly in your mind.

A. Yes, sir.

Q. When would you say it was with reference to that—before or after or about the same time?

A. About the same time. [2184]

Q. And it was about the same time that you signed those minutes, isn't that right?

A. No, I would say that the minutes followed that.

Q. Didn't you use that phone call as fixing the

(Testimony of David F. Logan.)

time of signing the minutes in your direct examination a little while ago?      A. Yes, sir.

Q. And isn't it a fact, Mr. Logan, that at the time you signed those minutes, Mr. Stone told you that at the meeting of the board of directors, it had passed a resolution approving a credit memorandum?      A. No, sir.

Q. Could you fix, either accurately or approximately, what time it was he told you about the credit memorandum and what time it was that you signed those minutes?

The Witness: What was the question?

(The last question was read by the Reporter.)

A. Yes, in late March.

Q. No, I mean how much— The question was clumsy, I'm sorry. Could you fix with any degree of accuracy at all the lapse of time between the two events? In other words, you said they weren't together.      A. No, sir.

Q. It was sometime in the same month, however.      A. Within that period.

Q. Now, I will direct your attention to one of Petitioner's Exhibits, for the benefit of counsel—I'll withdraw that question for the moment. As I recall it, you were fairly accurate or at least it seemed to me you were, in reference to [2185] disposing of the by-products of Franciscan, were you not?      A. Yes, sir.

Q. And is there any difference between the by-products of what you would call whiskey and the

(Testimony of David F. Logan.)

by-products of what you would call high-proof spirits?

A. You mean, food value?

Q. Well, I mean, was there any difference? You can explain your answer.

A. Well, yes, sir, I'll answer by saying there is a difference.

Q. And would you explain to us what that difference is? A. In my own words?

The Referee: We are talking now about by-products.

Mr. La Shelle: The difference between by-products and whiskey.

The Referee: Explain the difference.

Q. I'll withdraw that question first, and ask you this preliminary so that we understand. Whiskey normally is distilled at around 107 or 110 proof, isn't it? A. (The witness nods negatively.)

Q. What is it? A. No, sir.

Q. What is it then?

A. Generally not less than 130 nor more than 159.

Q. And it's barrelled down at what, as a rule?

A. 101.

Q. All right, now, what I mean by high-proof spirits, I mean [2186] 190 proof or higher. That's the usual standard, isn't it?

A. That's correct.

Q. Neutral spirits are 190 or higher.

A. That's right.

Q. So I have in mind the difference between

(Testimony of David F. Logan.)

high-proof at 190 or higher and the whiskey proof. Explain the difference there.

A. In the by-products, whiskey generally has a different recipe in the grain content. It has more malt, it has some rye, it may have corn and milo. That is the recipe of the formula. The yeast is generally different in its composition, in its germ cell. Inversely, for neutral grain spirits, it being a cost thing, how cheap can you make it, is generally the cheapest starch grain which could be milo or it could be wheat or it could be corn, with the minimum amount of maltose, malt barley to convert it over to starch and then to sugar, so that the resultant, if you analyze the protein content, for a steer or for a cow, would unquestionably be slightly different. I'm not a chemist so I couldn't say how much different. It would have to be different.

Q. Well, from a commercial standpoint, I mean, would you expect to get more for the by-products of neutral spirits or more for the by-products of whiskey? A. The same.

Q. You get the same, although the recipe and proof and everything are different. Now, in connection with your activities at Franciscan, with reference to its production, did you [2187] do anything at all other than handling or negotiating or concerning yourself with its by-products?

A. No, sir.

Q. That's all you did. A. Yes, sir.

Q. And naturally, the amount of by-products



(Testimony of David F. Logan.)

you had to sell depended upon your production, isn't that right?      A. Certainly.

Q. In other words, when you were producing, you had your by-products.      A. Yes.

Mr. Fisk: Would you speak up? It's difficult for the reporter.

The Witness: I'm addressing my remarks to him.

Mr. Fisk: I know, but instead of nodding your head, please.

Q. Now, isn't it true, Mr. Logan, that during the summer and winter of '46, which you call your fall inspections—I'm correct in stating the first six months of the year are called spring inspections and the second six months are called fall inspections.      A. That's right.

Q. So that the whiskey produced in the first six months is called spring inspection whiskey and the latter, fall inspection whiskey.

A. That is correct.

Q. Now, in the fall inspection months of '46, isn't it true that at that time Franciscan had a production contract with Schenley for some kind of merchandise?      A. I know that by hearsay.

Q. Did you ever see the written contract between Franciscan [2188] and Schenley which covered that period of time in '46?

A. No, sir, I never did.

Q. Did Mr. Stone tell you about it?

A. Parts of it, yes, sir.

Q. Did you know from what you were told there

(Testimony of David F. Logan.)

as to whether or not that called for whiskey of high-proof spirits?

A. I don't remember, no, sir.

Q. Do you remember whether or not—I'll withdraw that. How many stills did Franciscan have, if they had more than one?

A. It had technically three.

Q. And during the fall inspection months of '46, was anyone of the Franciscan stills capable of manufacturing spirits of 190 proof or higher at that time, do you recall?

A. Two of them were, yes, sir.

Q. And had they produced to your recollection, any spirits that summer?

A. I wouldn't know that.

The Referee: What's that?

A. I wouldn't remember whether they produced spirits during that entire fall period or whether they produced spirits and whiskey, if that was his question.

(Discussion off the record.)

The Referee: Under the circumstances, gentlemen, we have no alternative except to continue the matter until Monday, October 23. Mr. Logan, you are instructed to return. Ten-thirty, Mr. Logan.

(Discussion off the record.) [2189]

The Referee: Let the record show that Respondent's Exhibit No. 1, being the minute book of Franciscan, is being returned to Mr. Fisk and Mr. Casey and that Mr. Walsh, who heretofore took back the negotiable warehouse receipt book, Petitioner's Ex-

hibit No. 1 and brought it to court today, Mr. Walsh is taking it back with him.

(Discussion off the record.)

Mr. Fisk: Mr. Jaffa and Mr. Dinkelspiel and I believe, Mr. Glaser, said that I could have access to all of the records of Franciscan that are here in the possession of the Court, that I could have it out of their presence and the Court too, as I understand. Now, I know the Court, or rather, I think the Court has a practice of being in San Jose on Friday.

The Referee: Not tomorrow.

Mr. Fisk: I was going to ask if the Court would advise some of his assistants here to let us have access to them if that's agreeable.

The Referee: The books are available and the Court will not be in San Jose tomorrow.

(Discussion off the record.)

The Referee: Mr. La Shelle is taking Petitioner's 75, 75(a), 76, and 74 to have the four exhibits photostated, and Bank's 31 is being turned over to Mr. Fisk and Mr. Casey for the purpose of being photostated. [2190]

Monday, October 23, 1950—10:30 a. m.

Same appearances.

The Referee: Hedgeside Distillery Corporation.

Mr. La Shelle: Your Honor, at this time, I am going to make a motion to strike the testimony of the witness, Mr. Logan—all of the testimony with reference to storage rates and handling charges

and the testimony with reference to the charges by other warehouses in San Francisco and other areas. With reference to the testimony of other warehouses in San Francisco area, I direct the Court's attention particularly that there is no foundation laid for that testimony and it is tantamount to testimony, for example, that a men's store in Napa is not operating for profit because it doesn't charge the prices that Bullock & Jones in San Francisco charge for similar goods. In other words, there is a great deal of difference between San Francisco and union rates, local conditions, cost of operation, so that there would have to be a foundation laid for that particular testimony. With reference to the testimony in general, this precise question has been brought up in cases under the Uniform Warehouse Receipts Act, which was adopted by California and there are two cases on that that I have here at my fingertips over the weekend. There are more. One is the [2191] case of Webb & Co. vs. Friedberg, 126 S. E. 508 and Citizens State Bank of Vici vs. Gettig, 187 Pac. 217. That precise point was raised in those cases and rejected. If your Honor will recall, Mr. Casey called the Court's attention to the fact that Section 3440.5 which exempts warehouse receipts from 3440 refers in substance to warehouseman as defined in the act and there is a warehouse receipt issued and copies and so forth and the definition of a warehouseman in the act is one who stores goods for another for profit and that precise question was raised in these two cases. And

we checked it in the Webb case, page 507 of his decision the Court states:

“If the concern is engaged in the business and goods are stored for profit, the statute implies that notwithstanding it if the company stores its own and also the goods of others, the receipt issued terms itself ‘warehouse receipt’ shows on the face that the goods were stored for profit. It gives the storage rates.”

In the Citizens’ case, it states (this is page 218):

“It might be contended that the evidence disclosed in this case that no charge was to be made for the storing of the goods. That is true, but the profit anticipated was the expectancy of buying the goods in the future and the profit expected to be derived therefrom.”

In other words, it doesn’t have to be a profit as such under the warehousing operation if the operation was such as to anticipate an overall profit. So on the ground, therefore, that it is incompetent, irrelevant and immaterial, and particularly, that there is no [2192] foundation laid, we move to strike out that testimony, your Honor.

Mr. Fisk: If the Court please, the only question of charges made by others is only cumulative evidence. It, along with all of the other things that are in the record, govern the question of determining charges, to determine whether or not the operator of the warehouse is in the warehouse business for a profit. It only goes to the weight of the evidence. Regardless of what these cases hold (neither

of them, I take it, are California cases), but regardless of what they hold, they definitely do not hold that you cannot go into the question of charges in order to determine whether or not a warehouseman is operating a warehouse for a profit as determined from a statute or the Uniform Warehouse Receipts Act as applied in California under Section 3440. It only goes to the weight.

The Referee: Submitted?

Mr. La Shelle: Submitted, your Honor.

The Referee: Is that submitted? I'll have to look at the cases, Mr. La Shelle.

Mr. La Shelle: Ready to proceed?

The Referee: Yes.

Mr. Fisk: In that connection, may we submit what cases we have?

The Referee: Yes, send me a brief memorandum, such [2193] as a letter, and Mr. La Shelle.

Mr. La Shelle: Mr. Logan, I'll try to be brief.

#### DAVID F. LOGAN

having been previously sworn, resumed the stand and testified further as follows:

#### Cross Examination—(Continued)

By Mr. La Shelle: Q. The negotiable warehouse receipts which were issued to Barnhill and which you signed and in which, I think you stated that when you signed them, you assumed that non-negotiables had been turned in. That's right, isn't it?

A. Yes.

(Testimony of David F. Logan.)

Q. Those receipts are all dated January 3, 1948. Now, during the period of '46, 7 and 8 you were aware, were you not, or familiar with the general production of both Franciscan and Hedgeside, I mean, what they were producing?

A. In a very broad way.

Q. In other words, you knew that this particular whiskey of Barnhill on the receipts that you signed, was Mountain View or Franciscan whiskey.

A. Yes.

Q. You knew that. A. Yes.

Q. And you were familiar with the fact, were you not, that there was a contract for spirits, neutral spirits, between Schenley on the one hand and Franciscan and Hedgeside—two different contracts?

A. By hearsay—

Mr. Walsh: Just a moment, I am going to object to that question. [2194]

The Referee: Will you first read the question, before Mr. Walsh makes his objection?

(The last question was read by the Reporter.)

Mr. Walsh: I am going to make the objection, if your Honor please, on behalf of the trustee, that if there are any contracts in existence, they speak for themselves. The fact that he knew they were in existence has nothing to do with the issues of this case.

Mr. Fisk: Well, my objection would be that if he is going to interrogate the witness about the contracts, he should show him the contracts.

The Referee: You can answer, Mr. Logan,

(Testimony of David F. Logan.)

whether or not you knew the contracts mentioned were in existence. Just yes or no.

A. By hearsay only.

Q. In other words, Mr. Stone had told you that there were production contracts with Schenley.

Mr. Walsh: Just a minute, if your Honor please, that is not the evidence.

The Referee: You said by hearsay only.

The Witness: Yes.

The Referee: Well, let the record show that the Court has overruled Mr. Walsh's objection, other than permitting Mr. Logan to answer yes or no. And now the next question Mr. La Shelle asked you and you said "by hearsay only." [2195]

The Witness: Yes, sir.

Mr. La Shelle: This goes to the question of the witness' knowledge. I'm not trying to put in contracts.

The Referee: Now, the next question, Mr. La Shelle.

Mr. La Shelle: I'll reframe the question, your Honor.

Q. Am I correct in stating that Mr. Stone told you of the contracts?

A. I don't know whether Stone or someone else. I have heard of it.

Q. I see. In other words, you knew that you were producing spirits and—

A. I knew there was a contract, Mr. La Shelle. The contents, I do not know.

Q. No, I am not talking about the contracts



(Testimony of David F. Logan.)

standing alone. What I mean is this: You knew that spirits were being produced at Hedgeside and sold to Schenley.      A. Yes, sir.

Mr. Walsh: At Hedgeside, Mr. La Shelle?

Mr. La Shelle: Yes.

Q. And you also knew that spirits were being produced at Franciscan and sold to Schenley.

A. Yes, sir.

Q. Now, with reference to Bank's Exhibit No. 6—

(Discussion off the record.)

Q. Directing your attention to warehouse receipt No. 3472-B of Hedgeside, which is part of Bank's Exhibit No. 6 and which covers a hundred barrels of whiskey, there appears to be your [2196] signature here as the counter-signature of D. F. Logan, and that is your signature.      A. That is correct.

Q. Now, this was issued on or about July 30, 1947; that's the date of the receipt. With reference to the signing of that receipt, did Mr. Stone ask you to sign that to the best of your recollection?

A. It was a general practice that he would ask me to sign it.

Q. Have you any recollection on the subject at all as to the circumstances surrounding your signing that warehouse receipt?

A. This particular one?

Q. Yes.      A. No, sir.

Q. And there is nothing about that that refreshes your recollection at all.      A. No.

Q. And Mr. Stone's general practice on the vari-

(Testimony of David F. Logan.)

ous receipts that you signed was to bring the receipt to you and he would sign it and he asked you to sign it and you relied on him, is that about right?

A. That's right.

Q. In other words, you didn't question——

A. I would have no way to question.

Q. (Continuing) the authenticity of them at all. And I take it that I am also correct in stating that at the time you executed some of these receipts that you yourself had no idea that there might be duplicate receipts outstanding.

A. None whatever.

Q. Now, with reference to some of your testimony last [2197] Thursday, as I understood you to say, that at the time that the storage charges were fixed at 10 cents a barrel per month, 25 cents handling per month, that to your knowledge, no estimate or determination was made from a cost accounting basis as to whether or not strictly the warehouse operation would yield a profit at that rate.

The Witness: What was the question please?

(The last question was read by the Reporter.)

A. That is correct.

Q. And I think that you, in answer to some of Mr. Fisk's questions Thursday, with reference to what Mr. Stone did, you stated—correct me if I'm wrong—that he did everything that you would normally expect a president or general manager to do as to both corporations.

A. Are you asking me that question?

(Testimony of David F. Logan.)

Q. Yes.

A. My answer to that question was he occupied the position of general manager and a complete monarch or boss, to do as he wished, to hire, to fire, to borrow, to do everything that he wishes of the two Siamese twins—Hedgeside and Mountain View.

Mr. La Shelle: We move to strike out his testimony of the Siamese twins.

The Referee: So ordered.

Mr. Walsh: If your Honor please, I think that is very material. He asked the question. I think it is stated just exactly what Stone did. [2198]

The Referee: Yes, but Mr. La Shelle's question, Mr. Walsh, was, I understood, in answer to Mr. Fisk's question at the last hearing you testified that Mr. Stone performed all the duties with reference to the duties of a general manager and president and Mr. Logan is correcting that statement.

Mr. Walsh: I'll take it on my motion.

The Referee: You did get the Court's order with reference to striking out that part of the witness's testimony.

Mr. Walsh: Just that portion.

The Referee: That's correct. You still have not answered Mr. La Shelle's question. Read Mr. La Shelle's question first again and then with reference to the president and general manager and then read Mr. Logan's answer up until that part that is stricken.

(Testimony of David F. Logan.)

(The Reporter read from the beginning of line 10 on page 2198 to the end of the word "wishes" on line 20, page 2198.)

Mr. La Shelle: I think, your Honor, that the witness' testimony as to being a monarch to do as he wishes, should go out on the same basis as the Siamese twins—as the witness' conclusion.

Mr. Fisk: If the Court please, may I say something here? Mr. La Shelle's question obviously calls for some explanation by this witness of what he meant by that statement if he made it. If he is just asking him if he made the statement or whatever his statement was without any interrogation as to what he had in mind, then I say that the record speaks for itself. And I say that as I understand this witness' statement, he has explained to counsel whatever his testimony was or may have been in the record—what the situation was. Certainly, I think it is responsive to that extent.

The Referee: Well, the Court distinctly recalls the question that Mr. La Shelle is referring to with reference to Mr. Stone's position and with the duties that encompassed it. He gave some idea as to what Stone's duties were with reference to a president and a general manager, isn't that correct?

The Witness: Yes, sir, that's correct, sir.

The Referee: Now, Mr. La Shelle's question now, in all probability, is preliminary to the next question he is going to ask, is that correct, Mr. La Shelle?

Mr. La Shelle: But we made a motion——

(Testimony of David F. Logan.)

The Referee: Now, do you recall——

Mr. La Shelle: We would like to have the Court's ruling on that motion with reference to a monarch.

The Referee: It may go out. Do you recall the answer that you gave at our last hearing when Mr. Fisk asked you with reference to the duties of Stone as general manager and president? [2200]

The Witness: Not clearly, sir.

Q. Let me ask you this, Mr. Logan. During the time that you were up there, did you know how the stock ownership was held as to Franciscan? Not what you know now, but what you knew then.

A. By hearsay, yes, sir.

Q. And what was your knowledge? What you were told as to stock ownership.

A. At the end or at the beginning.

Q. During the time that they were working after it was incorporated.

A. During the incorporation period?

Q. Yes.

A. And you wish me to answer how it was held——

Q. No, what knowledge you had at that time in your own mind, whatever source.

A. My knowledge in my own mind from the incorporation of the first director's meeting that I attended until the last, which was the two meetings—the first and the last—was that 50 percent of that was owned by Glaser Bros. and/or Barnhill

(Testimony of David F. Logan.)

and 50 percent was owned by Hedgeside and/or Stone.

Q. Now, with reference to this Petitioner's Exhibit No. 6, the warehouse receipt that I just asked you about that you signed, you knew, of course, at the time you signed it that that receipt was being given to the bank for borrowing purposes, did you not? A. Naturally.

Q. You assumed that. Now, I notice that that warehouse [2201] receipt, if you will look at the bottom of it where it says "lot number, storage per handling," etc. that there is no storage and no handling charge on that. Now, do you know who made the determination that there would be no storage charges and no handling charges on that particular receipt?

A. There would only be one person who could make that determination.

Mr. La Shelle: We ask that the answer go out as not responsive, your Honor.

A. Do I know? No, sir.

The Referee: His answer may go out. Do you know who made that determination?

The Witness: May I answer that?

The Referee: That's the question now. Do you know? A. Do I know? Yes, sir.

Q. Who made that determination?

A. Stone.

Q. Did you have anything to do—were you consulted at all about it? A. No.

(Testimony of David F. Logan.)

Q. You knew nothing about it. I think you stated Thursday that the handling charges and in and out charge—

A. In or out, yes.

Q. In other words, if the handling charges denoted there are 25 cents as it was on these other receipts, according to your interpretation, does that mean that 25 cents charge when it comes in and 25 cents when it goes out?

A. Yes, sir.

Q. So actually the charge is 50 cents.

A. Yes, sir. [2202]

Q. Now, in your testimony Thursday, you stated that you signed checks for Franciscan, that's correct, is it not?

A. That's correct, yes.

Q. And that usually when you signed a check for Franciscan, there were two signatures to the check.

A. Yes.

Q. And I think you made some mention, if my notes are correct, that Stone was the only one that could sign the checks alone.

A. The principal other one. The standard was that Stone and I generally signed all of them.

The Referee: Yes, but Mr. La Shelle's question now is could Mr. Stone sign a check by himself without any other signature.

A. Yes, sir.

Q. Now, with reference to those checks for Franciscan, do you remember what bank that was?

A. Franciscan.

Q. Yes. A. American Trust Company.

Q. And did you and Mr. Stone and any others

(Testimony of David F. Logan.)

sign the usual card that the bank requires for signatures for a checking account?

A. We would have to, yes, sir.

Q. And it was that card that made provisions as to who would sign.

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Mr. La Shelle: We move, therefore, your Honor, that the part of the witness' testimony with reference to who could sign checks be stricken upon the grounds [2203] that the card at the bank is the best evidence of that setup.

Mr. Fisk: Well, I submit, your Honor, that the card at the bank is not the best evidence. The bank has no control over what the officers of the corporation do among themselves and furthermore, the testimony was what they did.

The Referee: Overruled.

Mr. Fisk: I think this was a motion to strike, your Honor.

The Referee: Oh. Motion denied.

Mr. La Shelle: Well, I think overruled can be construed as denied, can't it?

Q. Do you recall, Mr. Logan, approximately for what period of time Franciscan operated an IRBW?

A. No, I cannot, sir.

Q. Do you recall whether it was a year approximately, or six months or eighteen months?

A. No, sir, I cannot.

Q. Do you recall what year it was in operation?

Mr. Walsh: Your Honor please, there are the



(Testimony of David F. Logan.)

records of the distillery. Aren't they the best evidence?

The Referee: Are they here, Mr. Walsh?

Mr. Fisk: Yes, the warehouse receipt book is and that was the objection I was confronted with when I asked Miss Wilcox the same question.

Mr. La Shelle: I am not trying to prove that. I am trying to find out this witness' knowledge as to the operations up there, to test his recollection.

The Referee: You may answer. Overruled.

A. No, sir, I cannot fix the exact date when it started.

Q. I am not asking the exact date; I am asking approximately and roughly for what period of time—six months, a year, a year and a half?

A. It was in operation in 1948.

Q. Could you give us any estimate in months at all?

Mr. Walsh: He said he could not, your Honor. He has already answered that question.

The Referee: Can you answer that? Can you say what part of 1948 it was in operation?

A. In my judgment, all of '48.

Q. And I take it you resigned from the board of both Franciscan and Hedgeside.

A. Yes, sir, as of June, 1949.

Q. And for how many years were you associated in business with Mr. Stone, approximately?

A. Ten.

Q. Did you ever have any knowledge while you

(Testimony of David F. Logan.)

were up there—What I am trying to do is to distinguish what you may know now and what you knew then. You follow me there, don't you?

A. Yes, sir.

Q. Before Hedgeside went into business, sometime in '49 while you were still up there before you resigned, while you were up there, did you know or have any knowledge imparted to you by anyone as to any sales of whiskey from Franciscan to [2205] Hedgeside?

A. From Franciscan to Hedgeside?

Q. To Hedgeside. A. No, sir.

Mr. La Shelle: I have no further questions, your Honor.

The Referee: Mr. Walsh, you indicated to the Court you wanted to ask Mr. Logan some questions?

Mr. Walsh: Yes, your Honor.

The Referee: Do you prefer to do it now or after Mr. Fisk?

Mr. Walsh: I think I would prefer to wait.

The Referee: Mr. Fisk?

### Redirect Examination

By Mr. Fisk: Q. Mr. Logan, would you state in a general way what powers of a corporate officer Mr. Stone exercised in connection with the business of Hedgeside and Franciscan during the years '46, '47 and '48?

(Testimony of David F. Logan.)

Mr. La Shelle: We make the same objection, your Honor, as heretofore noted.

The Referee: Overruled.

A. Well, I don't—Will you read the question back please?

(The last question was read by the Reporter.)

Mr. Fisk: I'll reframe the question.

The Witness: I don't understand the question.

Mr. Fisk: Well, I'll reframe it.

Q. During the years '46, '47 and '48 in a general way, state what you observed Mr. Stone did in the form of operating [2206] Hedgeside and Franciscan?

A. In my own words, may I do that?

Mr. La Shelle: Well, this certainly would not be proper redirect. He went into that at some length, your Honor.

Mr. Fisk: Well, your Honor, that was the very question he asked. He asked the witness about whether or not he previously stated that Mr. Stone exercised the normal office of president and manager and I want him to explain it.

The Referee: You may answer in your own words what he did—what you observed him doing.

A. Mr. Stone's daily or weekly operation as observed by me of his duties and how he performed them, was basically as follows: He showed up at Hedgeside at 10 or 10:30 in the morning, he issued certain instructions to Mr. Robert, who was the superintendent of production, he carried on certain

(Testimony of David F. Logan.)

other business on the phone, he spent some time there and about once in every two or three weeks, he went to Mountain View and looked around and came back to Hedgeside. The point I am trying to explain, if I may, is that he spent the major portion of his time at headquarters, which was Hedgeside, and in his office or around there.

Q. Well, now, you have worked for other corporations than Hedgeside and Franciscan, have you not?       A. Yes, sir.

Q. And you observed how the president of a corporation [2207] functions, is that right?

A. Yes, sir.

Q. Now, did Mr. Stone during these years '46 to '48, function as president of Franciscan and Hedgeside according to observations as these other presidents did?

Mr. La Shelle: Just a moment, we object to that, your Honor. That is no criterion in this case from any standpoint as to whether Mr. Stone performed the office of president the way he has seen other presidents in other companies perform them.

The Referee: Sustained.

Q. During the years '46 through '48, did you ever at any time observe anyone connected with either of said corporations, overrule any decision of Mr. Stone?

Mr. La Shelle: Just a moment. Read that question to me please?

(The last question was read by the Reporter.)

(Testimony of David F. Logan.)

Mr. La Shelle: We make the same objection as heretofore noted.

The Referee: Overruled.

A. Emphatically, no.

Mr. Fisk: That's all.

The Referee: Mr. Walsh?

### Redirect Examination

By Mr. Walsh: Q. Mr. Logan, during the time that you were connected with the Hedgeside Distillery Corporation, did you ever have any opportunity or occasion to examine the bonded warehouse, that is, [2208] IRBW No. 2 located on Hedgeside's premises? · A. Yes, sir.

Q. And did you ever examine the setup regarding the way that the barrels of spirits and whiskey were placed in the warehouse? A. Yes, sir.

Q. Can you tell us how you did that?

A. How I examined it?

Q. Yes.

A. Well, inasmuch as storage of goods has a marked effect on the end on its salability, it was a point of interest to me and your question, if I understand it, is to describe the operation.

Q. That's correct.

A. Well, a barrel of whiskey or spirits or brandy, or whatever we call in the broad sense, spirits, came from Mountain View by truck or it came from Hedgeside by being rolled on to a platform where it was inspected, where the wheel of

(Testimony of David F. Logan.)

the numbers were put on to it giving its official birth certificate by the government, it was weighed to ascertain its true governmental weight, all of the records were made by the government and assisted by the employees of Hedgeside; it was then approved for putting into the rack, it was rolled into the warehouse, rack space was made available and the lift truck lifted from the catwalk to its respective rack. These racks were in a series of fifteen denominations deep. They went in numerically either forwards or backwards so they could be gotten out without scrambling. In other words, the first one in last or the last [2209] one in first; the bungs were inspected and the barrel came to rest with the bungs straight up.

Q. Now, Mr. Logan, was there any marking on any of those barrels that were stored at IRBW No. 2 which would show or indicate in any way the ownership of that spirits or whiskey?

A. Emphatically not, sir.

Q. Were the barrels of distilled spirits and whiskey stored in a particular section or set off for any particular owner or buyer?

A. No, sir.

Q. Mr. Logan, you testified both on direct examination by Mr. Fisk and cross examination by Mr. La Shelle, that you only attended two meetings of the board of directors of the Franciscan Farm & Livestock Company.

A. That's correct, sir.

(Testimony of David F. Logan.)

Mr. La Shelle: We make the same objection as heretofore noted, your Honor.

The Referee: Overruled.

Q. Now, during that time, did Mr. Stone consult you in any way about the activities of Franciscan Farm & Livestock Company? By that I mean, did he discuss with you any loans that were made by Franciscan?           A. No, sir.

Q. He did not.           A. No.

Q. Now, did he discuss with you at any time the placing of any of the Franciscan production in the Hedgeside IRBW No. 2 bonded warehouse?

Mr. La Shelle: We make the same objection, your [2210] Honor.

The Referee: Overruled. What is your answer, Mr. Logan?           A. He did not.

Q. Can you tell us approximately how many years you were a director and officer of Franciscan?

Mr. La Shelle: We make the same objection, your Honor.

The Referee: With reference to that, we have the minute book, do we not?

Mr. La Shelle: Yes.

Mr. Walsh: It isn't here now.

The Referee: Well, it's in evidence, Mr. Walsh.

Mr. Walsh: Well, I'll reframe my question.

Q. During the time that you were an officer and director of Franciscan Farm & Livestock Company, did you attend any meetings of the stock-

(Testimony of David F. Logan.)

holders and directors where any directors were re-elected to office?

Mr. La Shelle: We make the same objection, your Honor, as heretofore noted.

The Referee: Overruled. Did you?

Mr. Walsh: With the exception——

A. No.

The Referee: What is the answer?

The Witness: No.

Mr. La Shelle: I hardly think the witness would [2211] attend a stockholder's meeting.

The Referee: No, but he said stockholders and directors.

Q. Now, Mr. Logan, you testified on direct examination that Mr. Stone conducted the normal functions that a president and manager would do of a corporation. Can you tell me what you mean by that?

Mr. La Shelle: We make the same objection as heretofore noted, your Honor.

The Referee: You may answer. Overruled.

A. What I meant to imply, if I may clarify it, I have a very clear-cut definition of the true functions of a president and general manager and if I may *definite* what they are then you can—then I may go from there.

Mr. La Shelle: We object to any definition of that, your Honor. The bank already has in evidence the by-laws and the articles of incorporation, which



(Testimony of David F. Logan.)

is the best evidence as to the powers of a president and general manager in this case.

The Referee: Sustained. Read Mr. Walsh's question, please.

(The last question was read by the Reporter.)

Mr. Fisk: If the Court please, if I may enter my statement, it seems to me that the witness is attempting to answer the question by explaining his idea of what the functions of a president and manager are and then [2212] what he did, if I understand him correctly.

The Witness: Yes.

Mr. Fisk: It has nothing to do with what the by-laws or the articles of incorporation provide.

The Referee: Can you answer Mr. Walsh's question without giving us your definition of—

The Witness: Yes, sir.

The Referee: Will you answer Mr. Walsh's question?

The Witness: From my observation, was that the question?

The Referee: Read Mr. Walsh's question.

(The last question was re-read by the Reporter.)

A. What I mean by that is he held the powers entrusted to a president and general manager to hire, to fire, to borrow, to do as he pleased in that office in its entirety.

Mr. La Shelle: We ask that the witness' state-

(Testimony of David F. Logan.)

ment that he can do as he pleases in its entirety go out as conclusion.

The Referee: He said that's what he means.

Mr. Fisk: That is exactly the question.

Mr. La Shelle: We submit it, your Honor.

The Referee: Overruled.

Q. Now, Mr. Logan, did Mr. Stone at any time ever discuss with you as a director and officer of Franciscan, any of the policies of the corporation?

A. No, sir.

Mr. La Shelle: We make the same objection, your [2213] Honor.

The Referee: Overruled.

Q. Did he ever discuss with you at any time how the distillery should be operated?

A. No, sir.

Mr. La Shelle: Same objection, your Honor.

The Referee: Overruled.

Q. Did he ever discuss with you at any time the financial condition of Franciscan?

A. No, sir, he did not.

Mr. La Shelle: We make the same objection.

The Referee: Overruled.

Mr. La Shelle: It would be easier, Mr. Logan, if you wait for my objection before you answer the question.

The Witness: I apologize.

Mr. La Shelle: It would be easier on the court reporter, I mean.

Q. In other words, Mr. Stone conducted this

(Testimony of David F. Logan.)

corporation as if he owned the whole thing himself?

Mr. La Shelle: Just a moment, your Honor. We will object to that as calling for the conclusion and opinion of the witness.

Mr. Walsh: I am entitled to lay a foundation, if your Honor please.

The Referee: Sustained.

Q. You testified also that you were an officer and director of Hedgeside?

A. Yes, sir. [2215]

Q. Did Mr. Stone at any time consult you as an officer or director of Hedgeside on any matters regarding the financial condition of Hedgeside Distillery?

A. He did not.

Mr. La Shelle: Same objection, your Honor.

The Referee: Overruled.

A. He did not, sir.

Q. Did you at any time ever attend any meetings of the board of directors of Hedgeside Distillery whereby Stone as president and manager was authorized to borrow any money?

Mr. La Shelle: We make the same objection, your Honor.

The Referee: Overruled.

A. Not to my knowledge.

Q. Did you attend any meetings of the Board of Directors of Hedgeside—

Mr. La Shelle: Wait a minute. Same objection, your Honor.

(Testimony of David F. Logan.)

Mr. Walsh: You better let me finish.

The Referee: Wait until he is finished, Mr. La Shelle.

Mr. La Shelle: I'm sorry.

Mr. Walsh: Would you read that—just that part—for me?

(The last question was read by the Reporter.)

The Referee: Overruled.

Q. (Continuing) where there was a resolution made authorizing Stone as president and manager to enter into any contract [2216] with Schenley?

Mr. La Shelle: Are you through?

Mr. Walsh: Yes.

Mr. La Shelle: We make the same objection, your Honor, as heretofore noted.

The Referee: Overruled. A. No, sir.

Q. Did you ever read any minutes of any special meeting and approve the actions of Stone in making and entering into a contract, a production contract with Schenley?

Mr. La Shelle: We make the same objection.

The Referee: Just a minute, Mr. Walsh, before I rule on Mr. La Shelle's objection. You have two questions in there. It is entirely possible that the witness has read these resolutions subsequent to the hearing, at least during these court proceedings.

Mr. Walsh: Well, I'll—

The Referee: If you reframe it and then permit Mr. La Shelle to make the objection.

Mr. Walsh: I'll reframe my question.

(Testimony of David F. Logan.)

Q. Did you at any time prior to the filing of the petition in bankruptcy, which was in June, 1949, ever read any minutes of the meetings of the Board of Directors of Hedgeside Distillery Company where Mr. Stone was authorized to enter into a production contract with Schenley?

Mr. La Shelle: We make the same objection, your [2217] Honor.

The Referee: Overruled.

A. Not to my knowledge.

Q. Did you approve any such minutes?

Mr. La Shelle: Now, just a moment. What do you mean by approve? Did he sign them?

Mr. Walsh: Your Honor, I think the question is——

Mr. La Shelle: We will object to the question, your Honor, as not proper cross-examination and calling for his conclusion and opinion as to how he could approve it.

The Referee: Do you understand what Mr. Walsh means when he asks whether or not you approved?

The Witness: No, sir.

Q. Then I'll ask this question. Did you ever sign any minutes of the meetings of the Board of Directors relative to a Schenley production contract?

Mr. La Shelle: That is of Hedgeside or——

Mr. Walsh: Of Hedgeside.

Mr. La Shelle: Same objection, your Honor.

(Testimony of David F. Logan.)

The Referee: Overruled.

A. Not to my knowledge.

Q. Did Mr. Stone at any time consult you as an officer and director of either Hedgeside or Franciscan relative to the business dealings between Franciscan and Hedgeside?

Mr. La Shelle: We make the same objection, your [2218] Honor.

The Referee: Overruled.

A. No, he did not.

Q. Did he at any time ever consult you regarding the financial operations between Hedgeside and Franciscan?

Mr. La Shelle: We make the same objection, your Honor.

The Referee: Overruled.

A. He did not.

Mr. Walsh: I think that's all.

The Referee: Mr. La Shelle, by reason of the fact that the trustee does have a different defense, you can cross-examine the witness.

Mr. La Shelle: Just one question here.

Mr. Walsh: Just a minute, your Honor please, I didn't call this witness.

The Referee: I understand that, Mr. Walsh, but by reason of the fact that you and Mr. Fisk have had an opportunity to examine this witness on direct and then on redirect and you were permitted to withhold your examination until last and did come up with a new subject with reference to the

(Testimony of David F. Logan.)

stacking of the barrels and the loading of them and so forth, the Court will permit Mr. La Shelle to cross-examine.

Mr. Walsh: As to the entire matters I brought up——

The Referee: As to the new matters that you brought [2219] up, Mr. Walsh.

### Recross-Examination

By Mr. La Shelle: Q. I'll show you again warehouse receipt No. 3472-B, which is part of Bank's Exhibit No. 6 and following the word whiskey after the barrels, are the initials "S-N." That means serial number, doesn't it? A. It does.

Q. And then the numbers that follow that are the actual serial numbers.

A. That is correct.

Q. And those serial numbers are either burned or imprinted in some manner on the barrels when they're stored in the IRBW, is that right?

A. They're stamped in with a sharp tool.

Q. Yes. So that the serial numbers appear on the barrels. A. Yes, sir.

Q. And that is customary in Internal Revenue Bonded Warehouses to have the serial numbers on the barrels and that's all. A. No, sir.

The Referee: What is the answer?

A. No, sir.

Q. What is customary?

The Witness: May I answer it?

(Testimony of David F. Logan.)

The Referee: Just what is customary.

A. The barrel is based like this (indicating)——

Mr. Walsh: Round, you mean.

A. (Continuing) It's round. Across here is the maker (indicating). [2220]

The Referee: Mr. Logan, let me interrupt you. The court reporter, when you say across here, makes no indication as to what here is, so if you say around the top or something——

A. (Continuing) Around the top of the end is the name of the maker, his address is under that, his license number given to him by the government is under that; the net and the tare and the gross are stamped in under that, and the last is the—to the left is the word whiskey or spirits or brandy or rum and to the right of that word is the serial number.

Q. That's all done by the government gauger?

A. No, sir.

Q. No, I mean the barreling down is—I'll withdraw that. The barreling down as to what actually goes in a barrel, that's all done by the gauger.

A. No, sir.

Q. Well, didn't you tell me that the government men did that with the help of the——

A. No, sir.

Q. How does the government know what's in there for tax purposes?

The Referee: How does the government know what's in there for tax purposes?

A. The government man stands here (indicating), the employees——



(Testimony of David F. Logan.)

Mr. Fisk: Just a minute. What do you mean by "here"?

A. (Continuing) Well, here by the scale.

The Referee: On the right side. [2221]

A. (Continuing) On the right side of the scale, the employees of the company are technically his servants, they do the manual labor, they put the spirits into the barrel, they bung the barrel, they weigh the barrel, they stamp the barrel, they remove the barrel, or the government man does, write the numbers on the government form which is on the table by the scale.

Q. That's the storekeeper-gauger, isn't it?

A. Yes, sir.

Mr. La Shelle: That's all, your Honor.

#### Re-Direct Examination

By Mr. Walsh: Q. Now, Mr. Logan, in your experience——

Mr. La Shelle: Your Honor, is there any reason here for further——

The Referee: Well, just further redirect with reference to this stacking and the labeling and the spirits that go into the barrel.

Q. Now, Mr. Logan, from your experience and familiarity with the operations of the Hedgeside Distillery and IRBW bonded warehouse No. 2, if I went up there and got a release from Mr. Stone for a barrel of distilled spirits and paid the tax on it, would I know who owned that particular barrel

(Testimony of David F. Logan.)

of spirits, even though the serial number was on it?

Mr. La Shelle: We object to the form of that question, your Honor. It presents a hypothetical case that plays no part here. [2222]

Mr. Walsh: Well, he knows about the operation of the distillery. I am merely asking him——

The Referee: You may answer.

The Witness: Would you read Mr. Walsh's question to me again please?

(The last question was read by the Reporter.)

Mr. La Shelle: I would like to add to that objection, your Honor, that the only way he could do that would be to surrender a warehouse receipt or some form of ownership. You can't just go in and pay the tax and get a barrel of goods out of there.

The Referee: Is that a fact, Mr. Logan?

The Witness: No, sir.

The Referee: Is Mr. La Shelle's statement correct?

The Witness: No, sir.

The Referee: Then you answer Mr. Walsh's question.

A. You would have no way of knowing who owned that barrel.

Q. Mr. Logan, would I have to present to the government storekeeper gauger of the Hedgeside Distillery IRBW No. 2 bonded warehouse a warehouse receipt in order to have the government release that barrel of spirits or whiskey?

(Testimony of David F. Logan.)

Mr. La Shelle: We object to the form of that question, your Honor. The requirements of what it is to take spirits any time out of bond are fully covered by ATU regulations and red tape and the forms and what you have got to do. The government here is only interested [2223] in the tax; they don't care who owns the barrel.

Mr. Walsh: Will you stipulate that? Will you stipulate that the government is not interested—

Mr. La Shelle: I am not entering into any stipulation. I am making an objection.

The Referee: Overruled. You may answer the question.

The Witness: Will you read it back to me, please?

(The last question was read by the Reporter.)

A. You would not.

Mr. Walsh: No further questions.

By the Referee: Q. What would I have to do?

A. Nothing.

Q. You mean I could go up there and help myself to a barrel—

A. Providing, of course, your Honor, that you had the legal licenses and I am assuming that Mr. Walsh is a rectifier or bottler of spirits. He wouldn't just be an individual. He couldn't just be an individual. He should be a person in the trade so that he could take legal possession of the merchandise. I am assuming that he has those licenses.

(Testimony of David F. Logan.)

Mr. La Shelle: Well, I am assuming that I am a licensed dealer in——

A. (Continuing) A wholesaler, and you have the legal licenses to do it or you could even be a person who made cakes and pies over here in San Rafael, having the legal license to [2224] make rum and brandy or whatever it may be, you can take possession of the merchandise and go away with it.

Q. Then you answer this question for me. Assuming that I am legally entitled to it from the standpoint of having a license and I want to take a barrel of spirits out of IRBW No. 2 at Hedgeside, how would I get the barrel? What would I have to have so no one would stop me at the door walking out with a barrel of whiskey?

A. Very simple, sir. You would contact the management of IRBW No. 2, which in this case would be Mr. Stone; you would request Mr. Stone to have an actual tare made of the spirits to take care of the statutory losses so that you can determine the tare figure. That would be done by the help of that corporation, a paper would be made out which would stipulate that for government purposes, it would be sent to the Collector of Internal Revenue on McAllister Street, the tax would be paid on the actual tax goods with the statutory allowance deducted for the number of years or months, a green stamp would be handed back to the servant of the Hedgeside corporation, that stamp would be returned to the cashier or the officer in charge at Hedgeside, he in turn would

(Testimony of David F. Logan.)

take or have taken the barrel out of the rack and put the stamp properly torn on the end of the barrel. Those are the things done by the servant, which in this case would be the corporation. Then you, as Abrott & Company, could appear with your truck or anybody's truck, take legal possession of the merchandise and go away with it, take it [2225] to your place of business.

The Referee: Is that all, gentlemen?

Mr. La Shelle: I would like to ask this.

By Mr. La Shelle: Q. In other words, if I want to go up and tax-pay 9,000 barrels of spirits that are just there now, I can go up and tax-pay them and take that without presenting any warehouse receipt or evidence of ownership?

Mr. Walsh: Just a minute, your Honor please, I object to that as improper examination. He says "now; I can do it now." Well, "now" is confined solely to the operation prior to the filing of the petition in bankruptcy.

The Referee: We are not concerned with now anyway, are you, Mr. La Shelle?

Mr. La Shelle: Well, when you withdraw something, you have to get the warehouseman to agree to give it to you, as well as the government, don't you? Is the warehouseman going to give it to anybody that tax-pays it?

The Witness: Is that a question?

The Referee: Yes.

A. The warehouseman is the custodian of the keys in the sense that the bank is the custodian of

(Testimony of David F. Logan.)

the keys. If he wishes it, he can give it to you. He could give you your merchandise (indicating) or your merchandise (indicating) or your merchandise [2226] (indicating). The government is not interested in that aspect whether there's a warehouse receipt or a bill of lading or an invoice or anything. He isn't interested.

By the Referee: Q. Well, let's go beyond the government. Supposing I have taken care of the government along the lines that you say. Don't I have to make peace with either Hedgeside, whom I am buying it from or from the warehouse or someone else? A. Yes.

Q. What are the mechanics of that end of the transaction?

A. All right, we'll start all over again. You, J. B. Abrott & Company, and you being president of it, appeared on the premises either in person or by telephone call and you asked Stone or his agent to sell you a barrel of whiskey. The next question is what's the price? It's \$1.15 or 17, in which case money must change hands but no warehouse receipt is involved, you're not interested. Ultimately, for government records you would have to show that that was sold to J. B. Abrott & Company because it was moved out.

Q. Well, what does Stone give me? Now, this has nothing to do with the government tax angle. Supposing a barrel of whiskey cost me \$200 and I gave Stone \$200 and he said, okay, you have a barrel of whiskey. Now, does Stone go and get the

(Testimony of David F. Logan.)

barrel for me or does he give me a slip and I go somewhere?      A. He gives you an invoice.

Q. And what do I do with it? [2227]

A. You take it home with you.

Q. Yes, but I want to take the whiskey with me.

A. The invoice has no bearing on that problem. All Stone does is to say to his servant: "Go get the barrel out." It's tax paid. And that's the end of it and you take it home with you.

By Mr. La Shelle: Q. May I ask what the mechanics are to get a barrel out when there is a warehouse receipt issued outstanding covering the barrel? What are the mechanics there with the warehouseman as distinguished from the government?

A. In that case, you are J. B. Abrott & Company, you have a warehouse receipt number which the owner of the warehouse and the distillery would not be foolish enough to surrender physical merchandise, that serial number without your surrendering the warehouse receipt back to him first, money notwithstanding.

The Referee: So I gave him the warehouse receipt.

The Witness: Yes, sir.

Mr. Fisk: I ask that that statement go out as a conclusion of the witness that the owner of a warehouse would not be foolish enough. It's a question of what is the practice of Hedgeside if he wants to testify to that.

(Testimony of David F. Logan.)

The Referee: So ordered. Are you finished with Mr. Logan, gentlemen?

Q. In other words, the general mechanics are you got ten [2228] barrels of whiskey and a warehouse receipt, you want to withdraw five, you submit your warehouse receipt, they make a notation on the back that five barrels are withdrawn and then they go through the other mechanics you have described. A. That's right.

Mr. La Shelle: That's the general practice. That's all.

Mr. Fisk: I would like to ask a couple of questions.

#### Re-Redirect Examination

By Mr. Fisk: Q. In the light of your knowledge of the way an internal revenue bonded warehouse was operated, whenever there was outstanding a warehouse receipt, we will say a hundred barrels of whiskey or grain spirits and the person who owned that warehouse receipt wanted to withdraw twenty barrels, was he permitted to withdraw twenty barrels without surrendering the original warehouse receipt and having it marked on the back that twenty barrels were withdrawn, or not?

A. Yes, sir.

Q. And that was a practice that existed at Hedgeside through the years '46 through '48, is that not true? A. Yes, sir.

Q. To permit partial withdrawals without a re-



(Testimony of David F. Logan.)

turn of the original warehouse receipt, is that correct?      A. Yes, sir.

By Mr. La Shelle: What evidence would Hedgeside in such an instance make of the withdrawal?

A. A note could be made and the customer ultimately—maybe in a week or two weeks or three weeks, could enter that on the back of his non-negotiable, which might be pledged elsewhere, [2229] like in a bank.

Q. Would you say that there are no instances where Hedgeside noted withdrawals on the back of the warehouse receipt—partial withdrawals?

A. No, I would not say there was no instances.

Mr. La Shelle: That's all, your Honor.

By Mr. Fisk: Q. But you would say there were many instances where they didn't.

A. There were more where they didn't than where they did.

The Referee: Mr. Logan, thank you very much.

The Witness: Thank you, your Honor.

The Referee: I see the gentlemen kept their promise. It's not twelve. You're excused.

Mr. Fisk: Your Honor, I would like to offer this exhibit in evidence. It's a certified copy.

Mr. Casey: While Mr. La Shelle is reading that, here is Bank's 10, which you said was still missing.

Mr. La Shelle: We will object to that, your Honor, on the grounds it is incompetent, irrelevant and immaterial and particularly, that there is no foundation laid whatsoever for the testimony. There

is no evidence whatever in this case that the Hedgeside warehouse involved in this case is a public warehouse as distinguished from a private warehouse and the rates of public warehouses are of no evidence in this case to show whether or [2230] not Hedgeside, acting as a private warehouse, could or would or did or did not make a profit.

The Referee: You don't raise any objection with reference to the certification?

Mr. La Shelle: No, not as to that, your Honor.

The Referee: Objection overruled. The schedule of tariff pages signed by the Secretary of the Public Utilities Commission, State of California, dated the 10th day of October, 1950, the certification is dated the 10th day of October, 1950, and there are attached—

Mr. La Shelle: What number is that?

The Referee: Thirty-five. There are four sheets attached to the certification, Respondent Bank's Exhibit No. 35. The first one is issued the 21st day of January, 1949, its effective date is March 1, 1949; the second one was issued December 26, 1941, effective date January 15, 1942; the next one was issued August 21, 1939, effective date October 10, 1939; and the last one issued July 14, 1947, effective date September 1, 1947—Respondent Bank's Exhibit No. 35 in evidence.

(The documents referred to were received by the Referee and marked "Respondent Bank's Exhibit No. 35 in Evidence.")

The Referee: Mr. Fisk has offered the Court a document and he is now making a statement preliminary to offering it, I assume.

Mr. Fisk: The record will show that the Court sustained the objection to any testimony that Hedgeside or Franciscan had not filed their rates with the Public Utilities Commission and accordingly I would like to offer this affidavit or certificate of the Commission to show neither of them has ever filed their rates with the Public Utilities Commission.

Mr. La Shelle: Well, let me see if I understand you. Is this in connection with your storage-for-profit theory, Mr. Fisk?

Mr. Fisk: It's in connection with the entire case.

Mr. La Shelle: We object to it, your Honor, upon the grounds it's incompetent, irrelevant and immaterial and no foundation laid for this testimony and there is no showing that Hedgeside was operating a Public Utilities warehouse—such a private warehouse.

Mr. Fisk: We are not contending that.

The Referee: The objection is overruled and a document dated San Francisco, California, the 5th day [2483] of December, 1950, signed by secretary, Public Utilities Commission, State of California—I can't make out the name—becomes Respondent Bank's No. 47.

(The document referred to was received by

the Referee and marked "Respondent Bank's Exhibit No. 47.)

Mr. Walsh: Your Honor please, I was under the misapprehension that the claims of creditors in this bankruptcy proceeding had been offered in evidence. I was advised they were not. So as part of my case, I would like to offer in evidence, all of the verified claims of creditors on file in the bankruptcy proceedings in this reclamation proceeding.

Mr. Fisk: May I ask a couple of question on that, Frank? I'm not as well versed in those matters as you are. Would that mean the ones that are on file here? In other words——

The Referee: Seventy-two claims.

Mr. Fisk: How many?

The Referee: Seventy-two that have been filed.

Mr. Fisk: Seventy-two that have been filed. In other words, you could be scheduled in the schedules, but if you did not file a claim, you would not participate in any dividend that would be paid and Mr. Walsh is not offering those creditors. He is offering the claims which will indicate each creditor who has filed a claim in these proceedings, regardless of whether he [2484] is——

The Referee: Scheduled or not. There are seventy-two of them.

Mr. La Shelle: These are all claims against the Hedgeside Distillery Corporation, the bankrupt.

Mr. Walsh: That's right, they are all verified claims.

Mr. La Shelle: We have no objection to them in-

sofar as Hedgeside's production is concerned, but as to Franciscan's production we are petitioning to reclaim, we object to the creditors' claims being incompetent as to Franciscan's production, your Honor.

The Referee: Very well, the claims will be received in evidence as Trustee's Exhibit No. 1.

(The claims referred to were received by the Referee as "Trustee's Exhibit No. 1.")

Mr. La Shelle: I take it my objections are overruled.

The Referee: The only value they would have would be with reference to the Hedgeside matter anyway.

Mr. La Shelle: Let me explain what I had in mind there, your Honor. All of the goods are in the possession of the bankrupt in its bonded warehouse No. 2. However, the record at least shows that a certain amount of that production was Hedgeside production.

The Referee: Well, some was produced elsewhere. [2485]

Mr. La Shelle: Some was produced at Franciscan. My objection is it should be limited to the Hedgeside production.

The Referee: Mr. Walsh, did you hear Mr.—

Mr. Walsh: No, I didn't, your Honor; I'm sorry.

The Referee: Mr. La Shelle has no objection to the receipt in evidence of these claims, but he does object to the receipt in evidence of the claims

insofar as the Franciscan production is concerned, but he has no objection insofar as Hedgeside's production is concerned.

Mr. Walsh: No, your Honor please, I want these claims to go in evidence without any reservation whatsoever. Now, your Honor well knows the law regarding 3440 and also property in possession of the bankrupt. Now, if at the time this property was in the possession of Hedgeside Distillery Corporation, certain creditors extended credit to Hedgeside Distillery is quite material in the trustee's case regardless of Franciscan's status.

Mr. La Shelle: Your Honor, as I understand, the purpose of the offer is simply to show that there are creditors in such and such an amount and they filed claims. I don't know whether they have been prepared or not or anything of that nature, but the question of 3440 and its application here and 3440.5 and matters of [2486] law to be determined, how you can introduce the creditors' claims against Franciscan, I don't know. The fact that these creditors' claims have been filed against Hedgeside is a part of the record and as far as I think, they don't even need to be introduced. They're all part of the record here in the bankruptcy proceedings and I just regard them as such.

Mr. Fisk: If the Court please, these claims are offered in evidence in this proceeding.

The Referee: As Respondent's and Trustee's Exhibit No. 1.

Mr. Fisk: Right, for whatever purpose they

serve in the proceeding. You cannot segregate them as to Franciscan or Hedgeside.

The Referee: Objection is overruled. Respondent-Trustee's Exhibit No. 1 is the claims file containing the 72 claims filed in the bankruptcy proceeding.

\* \* \* \* \* [2487]

[Endorsed]: Filed March 6, 1952.

---

[Endorsed]: No. 13600. United States Court of Appeals for the Ninth Circuit. Anglo California National Bank of San Francisco, Appellant, vs. Schenley Industries, Inc., a corporation, Appellee. Charles W. Ebnother, Trustee of the Estate of Hedgeside Distillery Corporation, bankrupt, Appellant, vs. Schenley Industries, Inc., a corporation, Appellee. Transcript of Record. Appeals from the United States District Court for the Northern District of California, Northern Division.

Filed: October 30, 1952.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13600

THE ANGLO CALIFORNIA NATIONAL  
BANK OF SAN FRANCISCO,

Appellant,

vs.

SCHENLEY INDUSTRIES, INC.,

Appellee.

CHARLES W. EBNOTHER, Trustee of the  
Estate of Hedgeside Distillery Corporation,

Appellant,

vs.

SCHENLEY INDUSTRIES, INC.,

Appellee.

APPELLANTS' STATEMENT OF POINTS  
ON APPEAL

Pursuant to Rule 19(6) of the Rules of this Court, Appellant The Anglo California National Bank of San Francisco and Appellant Charles W. Ebnoter, Trustee of the Estate of Hedgeside Distillery Corporation, make this statement of points on which they intend to rely in this appeal.

1. The District Court erred in its Opinion and Order in not finding that the Trustee in Bankruptcy was entitled to retain exclusive possession of 5058 barrels of Hedgeside Distillery Corporation (herein



referred to as "Hedgeside") grain spirits production as against Schenley Industries, Inc. (herein referred to as "Schenley").

2. The District Court erred in said Opinion and Order in holding that Schenley is the exclusive owner of said 5058 barrels of Hedgeside grain spirits production and entitled to the immediate possession thereof.

3. The District Court erred in said Opinion and Order in finding and holding that Hedgeside was a warehouseman under the California Warehouse Receipts Act within the exception (3440.5 C.C.) to Section 3440 of the California Civil Code and not subject to said Section in the transfer of 5058 barrels of Hedgeside grain spirits to Schenley.

4. The District Court erred in said Opinion and Order in finding and holding that said Section 3440 has no application where the goods subject to transfer are stored in an Internal Revenue Bonded Warehouse.

5. The District Court erred in said Opinion and Order in that there was no evidence adduced to support a finding that Hedgeside was a warehouseman as defined by the California Warehouse Receipts Act.

6. The District Court erred in said Opinion and Order in finding that Schenley at any time held all the indicia of ownership for said Hedgeside grain spirits production.

7. The District Court erred in said Opinion and Order in holding that Section 3440 of the California Civil Code had no application to the purported transfer of said Hedgeside grain spirits production.

8. The District Court erred in said Opinion and Order in holding that transfers of the type involved in the purported sales of said Hedgeside grain spirits production to Schenley satisfied the provisions of Section 3440 of the California Civil Code treating with the requirements of "immediate delivery and actual continued change of possession."

9. The District Court erred in said Opinion and Order in not holding that the documents designated as "warehouse receipts" and given by Hedgeside to Schenley in connection with the purported transfer of Hedgeside grain spirits production are insufficient in law to avoid the effect of Section 3440 of the California Civil Code.

10. The District Court erred in said Opinion and Order in holding that Schenley was the owner of "valid warehouse receipts" covering Hedgeside grain spirits production.

11. The District Court erred in said Opinion and Order in holding that Hedgeside fell within the exemption provisions of Section 3440.5 of the California Civil Code in connection with the transfers of Hedgeside grain spirits production.

12. The District Court erred in said Opinion and Order in holding that the bankrupt, Hedgeside, was

a "warehouseman" as defined by the California statutes and was authorized to issue valid warehouse receipts in connection with the transfers of Hedgeside grain spirits production.

13. The District Court erred in said Opinion and Order in finding that the bankrupt, Hedgeside, was "in the business of storing goods for profit" in connection with the transfers of Hedgeside grain spirits production.

14. The District Court erred in said Opinion and Order in finding that the bankrupt, Hedgeside, charged a "reasonable" rate for storage of the Hedgeside grain spirits production on its premises.

15. The District Court erred in said Opinion and Order in finding that copies of warehouse receipts issued in connection with Hedgeside grain spirits production were kept "at the warehouse" where such goods were stored.

16. The District Court erred in said Opinion and Order in finding that Hedgeside stored its own grain spirits production in the regular course of its business.

17. The District Court erred in said Opinion and Order in holding that Hedgeside held State permits and licenses authorizing it to conduct a public warehouse within the meaning of the California Warehouse Receipts Act.

18. The District Court erred in said Opinion and Order in holding that the California Warehouse

Receipts Act has repealed Section 3440 in its application to the subject goods.

19. The District Court erred in said Opinion and Order in finding that the Bank, in accepting receipts from Hedgeside, relied solely on the mere possession of grain spirits by Hedgeside as a proprietor of a government bonded warehouse.

20. The District Court erred in said Opinion and Order in finding that the Bank, in accepting receipts from Hedgeside, was not misled or deceived or suffered detriment because of any act or omission on the part of Schenley.

21. The District Court erred in said Opinion and Order in holding that the California Warehouse Receipts Act was the exclusive statute governing for all purposes the transfer of title and ownership to Hedgeside grain spirits production.

22. The District Court erred in said Opinion and Order in holding that Hedgeside was at all times in question lawfully engaged in the business of storing goods for a profit.

23. The District Court erred in said Opinion and Order in finding that Hedgeside issued valid warehouse receipts for its grain spirits production stored in I.R.B.W. No. 2 including the receipts held by Schenley.

24. The District Court erred in said Opinion and Order in holding that Hedgeside was not a public

utility and not subject to the Public Utilities Act of California.

25. The District Court erred in said Opinion and Order in holding that the Anglo Bank has no interest in any of the Hedgeside grain spirits production.

26. The District Court erred in said Opinion and Order in holding that Hedgeside did not have any right, title or interest in the 574 barrels of Hedgeside grain spirits production except as Schenley's bailee.

27. The District Court erred in said Opinion and Order in holding that Schenley was the owner and holder of valid warehouse receipts for the 574 barrels of Hedgeside grain spirits production.

28. The District Court erred in said Opinion and Order in holding that Hedgeside charged a reasonable rate in the regular course of business for storage.

29. The District Court erred in said Opinion and Order in finding that the Bank, in accepting receipts from Hedgeside as to Hedgeside grain spirits production, relied solely on the mere possession of such spirits by Hedgeside as the proprietor of a bonded warehouse.

30. The District Court erred in said Opinion and Order in holding that Hedgeside was at no time clothed with the apparent ownership of the 574

barrels of Hedgeside grain spirits production but held only naked possession.

31. The District Court erred in said Opinion and Order in that there was insufficient evidence adduced to support the findings referred to in paragraphs 1 to 30, inclusive, above and each of them.

Dated: January 15, 1953.

/s/ FRANCIS P. WALSH,

/s/ HENRY GROSS,

/s/ JAMES M. CONNERS,

Attorneys for Appellant, Charles W. Ebnother,  
Trustee in Bankruptcy.

/s/ FREDERICK M. FISK,

Attorney for Appellant, The Anglo California National Bank of San Francisco.

Of Counsel:

/s/ CHICKERING & GREGORY

Acknowledgment of Service attached.

[Endorsed]: Filed Jan. 15, 1953. Paul P. O'Brien,  
Clerk.

---

[Title of U. S. Court of Appeals and Cause.]

APPELLANTS' DESIGNATION OF RECORD  
ON APPEAL

Come now Charles W. Ebnother, Trustee in Bankruptcy, and The Anglo California National Bank of San Francisco, each appellants in the

above entitled cause, and state that the parts of the record as docketed in the above Court that each of them deems necessary to the consideration of their respective appeals are as follows:

1. Reclamation Petition filed by Schenley Industries, Inc.
2. Answer filed by Trustee in Bankruptcy.
3. Answer filed by The Anglo California National Bank of San Francisco.
4. Order on Reclamation Petition dated January 10, 1952, signed by Hon. Bernard J. Abrott, Referee in Bankruptcy.
5. Petition for Review dated February 19, 1952, taken by Charles W. Ebnother, Trustee in Bankruptcy, and The Anglo California National Bank of San Francisco.
6. Referee's Certificate on Petition to Review Relative to Schenley Industries, Inc., Petition for Reclamation dated March 5, 1952.
7. Opinion and Order of Hon. Dal M. Lemmon, United States District Judge, signed and filed August 18, 1952.
8. Notice of Appeal filed September 16, 1952, by The Anglo California National Bank of San Francisco.
9. Notice of Appeal filed September 16, 1952, by Charles W. Ebnother, Trustee in Bankruptcy.

\* \* \* \* \*

12. Respondent Bank's exhibits 35 and 47 in evidence.

13. Warehouse receipts in Reclamation, petitioner's exhibits 43, 52 and 53 in evidence.

14. Statement of points on which appellants intend to rely on appeal.

15. This designation.

Appellants further state that a stipulation will be presented waiving the requirement that the foregoing exhibits be printed or failing in that a motion authorizing such procedure will be presented to the Court.

Dated: January 15, 1953.

/s/ FRANCIS P. WALSH,

/s/ HENRY GROSS,

/s/ JAMES M. CONNERS,

Attorneys for Appellant, Charles W. Ebnother,  
Trustee in Bankruptcy.

/s/ FREDERICK M. FISK,

Attorney for Appellant, The Anglo California National Bank of San Francisco.

Of Counsel:

/s/ CHICKERING & GREGORY

Acknowledgment of Service attached.

[Endorsed]: Filed Jan. 15, 1953. Paul P. O'Brien,  
Clerk.



[Title of U. S. Court of Appeals and Cause.]

APPELLEE'S DESIGNATION OF RECORD  
ON APPEAL

Comes now Schenley Industries, Inc., Petitioner in Reclamation in the court below, and Appellee in the above-entitled cause, and states that the parts of the record as docketed in the above court which are necessary to the consideration of this appeal, in addition to those parts previously designated by Appellants, are as follows:

1. The testimony of David F. Logan contained in the Reporter's Transcript on page 2097, line 12, to and including page 2103, line 26, and on page 2145, line 17, to and including page 2230, line 14; the narrative statement of this witnesses' testimony set out in Appellant's designation of record is not satisfactory to Appellee, and Appellee elects to require Appellants to substitute said witnesses' testimony contained in the above pages in question and answer form, pursuant to Rule 75(c) of the Federal Rules of Civil Procedure.

2. The entire testimony of Helen Husted contained in the Reporter's Transcript on page 1455, line 7, to and including page 1569, line 8; the narrative statement of this witnesses' testimony set out in Appellant's designation of record is not satisfactory to Appellee, and Appellee elects to require Appellants to substitute said witnesses' testimony

in question and answer form, pursuant to Rule 75(c) of the Federal Rules of Civil Procedure.

3. Testimony of Charles W. Ebnother, Trustee, contained in the Reporter's Transcript on pages 19, line 1, to and including page 23, line 22; page 394, line 24, to and including page 410, line 22; page 1178, line 3, to and including page 1264, line 10.

4. Testimony of Oliver I. Jacobsen, contained in the Reporter's Transcript on page 61, line 15, to and including page 116, line 13.

5. Testimony of Earl I. Johnson, contained in the Reporter's Transcript on pages 411, line 4, to and including page 448, line 4; page 563, line 22, to and including page 726, line 20; page 758, line 6, to and including page 800, line 22; page 803, line 22, to and including page 863, line 21; page 889, line 22, to and including page 909, line 2; page 1129, line 7, to and including page 1140, line 13.

6. Testimony of Robert H. Baglin, contained in the Reporter's Transcript on page 185, line 24, to and including page 198, line 23; page 208, line 10, to and including page 216, line 9.

7. Testimony of Walter Del Tredici, contained in the Reporter's Transcript on page 234, line 1, to and including page 271, line 9; page 274, line 6, to and including page 306, line 25.

8. Testimony of Elouise Jones, contained in the Reporter's Transcript on page 1140, line 15, to and including page 1144, line 5; page 1281, line 11, to and including page 1315, line 10.

9. Testimony of Eugene Branstetter, contained in the Reporter's Transcript on page 1339, line 6, to and including page 1349, line 4.

10. Testimony of Arthur E. Leithman, contained in the Reporter's Transcript on page 1574, line 21, to and including page 1610, line 7; page 1964, line 20, to and including page 1971, line 22.

11. The offer in evidence by the Trustee of Trustee's Exhibit No. 1, contained in the Reporter's Transcript on page 2484, line 6, to and including page 2487, line 17.

12. The objections of counsel for Appellee to the receipt into evidence of Respondent Bank's Exhibit No. 35, contained in the Reporter's Transcript on page 2230, line 15, to and including page 2231, line 23.

13. The objections of counsel for Appellee to the receipt into evidence of Respondent Bank's Exhibit No. 47, contained in the Reporter's Transcript on page 2483, line 5, to and including page 2484, line 5.

14. In addition to Appellant's designation of petitioner's exhibits in evidence Nos. 43, 52, and 53, the following exhibits in evidence of Appellee:

Petitioner's Nos. 1 through 5, inclusive, 14 through 21, inclusive, 22-A, 22-B, 40, 45, 46, 47, 50, 54, 59, 60, 61, 62, 65, 69, 88 and 89.

Also petitioner's Exhibit No. 34 for identification.

15. This designation.

Appellee will present a stipulation waiving the requirement that the foregoing exhibits be printed or failing in that a motion authorizing such procedure will be presented to the court.

Concurrently with this designation, Appellee has served and filed its motion to require Appellants to properly designate the testimony and evidence referred to above as necessary for the consideration of the appeal, or in the alternative to strike from the record paragraphs 5 and 31 of Appellants' Statement of Points on Appeal.

Dated: January 23, 1953.

BRONSON, BRONSON & McKINNON

/s/ By KIRKE LA SHELLE

/s/ By JOHN F. WARD

Attorneys for Appellee Schenley Industries, Inc.

Acknowledgment of Service attached.

[Endorsed]: Filed Jan. 23, 1953. Paul P. O'Brien, Clerk.